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DEPARTMENT OF JUSTICE

8 CFR Part 3

[EOIR No. 121F; AG Order No. 2214–99]

RIN 1125–AA23

Motion To Reopen: Suspension of Deportation and Cancellation of Removal

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations of the Executive Office for Immigration Review (EOIR) by extending the time period for the filing of an application of suspension of deportation and special rule cancellation of removal and all of the documentation supporting a motion to reopen filed pursuant to section 203(c) of the Nicaraguan Adjustment and Central American Relief Act.

DATES: *Effective date:* This final rule is effective March 22, 1999.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION: This rule amends and adopts in final form an interim rule published at 63 FR 31890 on June 11, 1998. That interim rule amended 8 CFR Part 3 by establishing a special procedure for the filing and adjudication of motions to reopen to apply for suspension of deportation and cancellation of removal under section 203 of the Nicaraguan Adjustment and Central American Relief Act (Pub. L. 105–100; 111 Stat. 2160, 2193) (NACARA). That Act, signed into law on November 19, 1997, amended section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208; 110 Stat. 3009–625) (IIRIRA). This rule makes two changes to the interim rule. First, the final rule extends the February 8, 1999 deadline to submit the application for suspension of deportation or special rule cancellation of removal and all of the supporting documentation in support of the NACARA motion to reopen. Second, the final rule addresses certain eligibility problems for a dependent with a final order of deportation or removal who is unable to complete his or her motion to reopen until the principal alien is granted relief.

Background

Section 203 of NACARA provides special rules regarding applications for suspension of deportation and cancellation of removal by certain aliens. These aliens include Guatemalan, Salvadoran, and certain former Soviet bloc nationals described in section 309(c)(5)(C)(i) of IIRIRA, as amended by section 203 of NACARA.

On November 24, 1998, the Department of Justice published a proposed regulation implementing section 203 of NACARA that would permit certain aliens eligible for relief under section 203 of NACARA to submit to the INS applications for suspension of deportation or special rule cancellation of removal. Such applications will be adjudicated by asylum officers. In certain cases, aliens currently in immigration court proceedings would be given the opportunity to move for administrative closure of their cases in order to apply for relief before the INS. The period for public comment on the section 203 rule closed on January 25, 1999, and the Department will publish a rule implementing section 203 of NACARA after review and consideration of all comments. Several provisions within the proposed rule are likely to affect immigration court proceedings with respect to NACARA motions to reopen; these provisions are discussed where relevant in the following sections.

Section 203(c) of NACARA also amended section 309 of IIRIRA by creating a provision for eligible aliens who have already received a final order of deportation or removal to file a motion to reopen in order to obtain the benefits of NACARA. Section 309(g) of IIRIRA, as amended, permits aliens with final orders of deportation or removal who have become eligible for cancellation of removal or suspension of deportation as a result of the amendments made by section 203 of NACARA to file one motion to reopen removal or deportation proceedings to apply for such relief, without regard to the limitations imposed by law on motions to reopen. That provision further required the Attorney General to designate a specific time period for filing such motions to reopen under NACARA beginning no later than 60 days after the date of enactment of NACARA and extending for a period not to exceed 240 days.

Accordingly, on January 15, 1998, the Attorney General signed a notice that designated from January 16, 1998, to September 11, 1998, as the time period for filing NACARA motions to reopen. *See* 63 FR 3154 (Jan. 21, 1998). That notice waived the filing fee for motions to reopen filed pursuant to NACARA, but did not disturb any other regulatory provisions with respect to the filing or adjudication of motions to reopen.

The Interim Motion To Reopen Rule

The interim published on June 11, 1998, addressed the specific filing process for NACARA motions to reopen in two ways. First, it clarified who can file a motion to reopen pursuant to section 309(g) of IlRIRA, as amended by section 203(c) of NACARA, by defining who has become eligible for ''special rule'' cancellation of removal or suspension of deportation as a result of the amendments made by section 203 of NACARA. Second, it permitted any alien who is moving to reopen pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, to file an abbreviated motion to reopen initially, without also including a suspension or cancellation application and supporting documents. This two-tiered procedure departs from the general requirement that a motion to reopen must be accompanied by the appropriate application for relief and supporting documents at the time of filing. The interim rule provided that aliens who had filed a motion to reopen by September 11, 1998, must submit an application for suspension of deportation or special rule cancellation of removal and all other supporting evidence and arguments in favor of reopening no later than February 8,

1999, in order to complete the motion to reopen.

The Final Rule

This final NACARA motion to reopen rule amends two aspects of the interim NACARA motion to reopen rule based on consideration of public comments, as well as the Department's review of the process during the interim rule period.

First, the final rule extends the February 8, 1999 deadline to submit the application for suspension of deportation or special rule cancellation of removal and all of the supporting documentation in support of the NACARA motion to reopen. An alien who timely filed the abbreviated NACARA motion to reopen will have 150 days from the effective date of the rule implementing section 203 of NACARA to complete the motion by submitting the application for suspension of deportation or special rule cancellation of removal accompanied by any supporting evidence.

Second, the final motion to reopen rule and addresses certain eligibility problems for a dependent with a final order of deportation or removal who is unable to complete his or her motion to reopen until the principal alien is granted relief. The final rule continues to require a dependent to meet NACARA motion to reopen filing deadlines, however, it now enables the dependent to reopen his or her case upon a showing that he or she is *prima facie* eligible for suspension of deportation or special rule cancellation of removal pursuant to NACARA. *Prima facie* eligibility requires that the dependent show he or she meets the statutory requirements for suspension of deportation or special rule cancellation of removal relief and requires proof that the principal has applied for NACARA relief.

The Department received sixteen comments following publication of the interim rule. The sixteen comments contained six themes, all of which are addressed below.

September 11, 1998 Deadline

Fourteen commenters suggested that the September 11, 1998 deadline for submitting motions to reopen should be extended to account for the size of the affected population, the difficulty of verifying the existence of many final orders issued prior to 1989, and the lagtime between announcing the designated period and publication of the interim rule.

Section 203(c) of NACARA directed the Attorney General to designate a time period up to 240 days in which an eligible alien could file a NACARA motion to reopen without regard to the time limits generally imposed by statute or regulation. Section 203(c) also required that the Attorney General designated such a period beginning no later that 60 days after the passage of NACARA. Consequently, the Attorney General designated the period from January 16, 1998, to September 11, 1998, as the statutory period in which a NACARA motion to reopen could be filed. The period for filing motions to reopen was set by Congress and, accordingly, cannot be extended by rule.

The Department recognized, however, that it would be difficult for many individuals to complete their applications for relief within that time frame. The Department sought to address this apparent difficulty by permitting applicants to file an abbreviated motion to reopen that could be supplemented with a full application no later than February 8, 1999. *See* 63 FR 31890 (June 11, 1998). This final rule further extends the time for filing the application and accompanying material in support of the motion to reopen. Any alien who filed an abbreviated NACARA motion to reopen by September 11, 1998, under section 203 of NACARA will receive the benefit of this rule.

The Department continues to believe that this two-step approach adequately addresses the concerns raised regarding the initial filing deadline, while adhering to the statute.

The expiration of the special NACARA filing period, however, does not preclude individuals who believe they are eligible for relief under NACARA from seeking to reopen their final orders under the standard rules governing motions to reopen. The INS will consider on a case by case basis whether to join in a motion to reopen raised by an otherwise eligible applicant who has missed the statutory deadline. *See* 8 CFR 3.23(b)(4)(iv).

February 8, 1999 Deadline

Fourteen commenters stated that the February 8, 1999 deadline for submitting the application and supporting documentation should be extended for those aliens with outstanding Freedom of Information Act (FOIA) requests. They argue that applicants will not have enough information and may be missing critical information contained in the FOIA documentation to determine whether they should complete the motion to reopen. Most commenters stated that the deadline should be extended until 60 after the alien receives the Department's final response to a FOIA request.

The existence of a pending FOIA request would not, of itself, suffice to extend the filing deadline. However, the Department recognizes that much time has elapsed since some of the orders were issued, and it may be difficult to obtain the information necessary to complete in application.

Moreover, the Department recognizes that some of the individuals who have filed motions to reopen under NACARA may want to file under the new program at the INS. Many aliens are eligible to have their applications reviewed by asylum officers, as described in the proposed rule implementing section 203 of NACARA, published on November 24, 1998. *See* 63 FR 64895. Under the section 203 proposed rule, which establishes the procedure to apply for suspension of deportation or special rule cancellation of removal for aliens defined as NACARA-eligible, applications submitted to the INS must be filed on proposed Form I–881. The Form I–881 will not become available to the public until the effective date of the rule implementing section 203 of NACARA. In order to minimize the number of forms an alien must submit, the Department believes that it is reasonable to extend the February 8, 1999 deadline for NACARA motions to reopen so that applicants need only submit the Form I–881.

Thus, the final rule permits an applicant to submit his or her application and accompanying documents no later than 150 days after the rule implementing section 203 of NACARA becomes effective. This extension will permit applicants who properly filed the abbreviated NACARA motion to reopen by September 11, 1998, to submit the Form I–881 to complete their motion to reopen. The extension will also permit certain NACARA-eligible applicants to establish that their NACARA-eligible parent or spouse has applied for relief under section 203 of NACARA, as discussed below.

Dependents Under NACARA Section 203

Fourteen commenters expressed concern that the interim regulation did not acknowledge the eligibility problems faced by certain family members of NACARA-eligible aliens. Although NACARA extends eligibility to the spouse, child, or unmarried son or unmarried daughter over the age of 21 (dependent) of persons described in section 203 of NACARA, such dependents are not eligible for suspension of deportation or special rule cancellation of removal until the designated parent or spouse (principal)

has received a grant of suspension of deportation or special rule cancellation of removal. Consequently, even if a NACARA dependent completes his or her motion to reopen by submitting an application and accompanying documents, the dependent is not eligible for relief unless and until the principal is first granted relief. Commenters noted that the applications of the vast majority of NACARA principals would not have been adjudicated as of the February 8, 1999 deadline established by the interim rule. Therefore, they suggested that the final rule permit immigration judges to grant motions to reopen for NACARA dependents regardless of the application status of the principal applicant.

The Department recognizes that many NACARA dependents who were required to file motions to reopen by September 11, 1998, would not yet know the results of the principal's application at the time of the deadline for completing their application for suspension of deportation or special rule cancellation of removal. The Department has identified a similar problem with respect to NACARA dependents who are presently in deportation or removal proceedings. The proposed rule implementing section 203 permits the Immigration Court to administratively close the dependent's case to allow the dependent to submit an application for suspension of deportation or special rule cancellation of removal with the Service if (1) the dependent has a NACARA-eligible relative who has submitted an application for such relief with the Service, and (2) the dependent appears otherwise eligible for discretionary relief under section 203 of NACARA. The Board may also administratively close or continue the dependent's appeal to permit the dependent to submit to INS an application for suspension of deportation or special rule cancellation of removal.

Unlike dependents currently in proceedings, dependents previously ordered deported must have their cases reopened before they can apply for NACARA relief. The proposed rule implementing section 203 of NACARA does not address how the Department interprets the statute with regard to a dependent who has already been ordered deported or removed. To address the problem within the context of motions to reopen, the Department has decided to modify the final rule with respect to dependents. The dependent must comply with the deadline for filing the application and supporting documentation. However, the dependent's case shall be reopened if the immigration judge finds that the dependent is *prima facie* eligible for suspension or cancellation relief and if the dependent submits proof that the principal alien has applied and is *prima facie* eligible for NACARA relief. Once the dependent's case is reopened the dependent will be subject to the same procedures established in the section 203 rule for dependents in proceedings.

Waiver of Substantive Bars to Relief

Fourteen commenters stated the interim regulations impose improper limitations to NACARA eligibility, and that it was the intent of Congress to waive all limitations on eligibility for relief, except the bar for aggravated felons.

The statute states, ''notwithstanding any limitation imposed by law on motions to reopen removal or deportation proceedings (except limitations premised on an alien's conviction of an aggravated felony) * * * any alien who has become eligible for cancellation of removal or suspension of deportation as a result of the amendments * * * may file one motion to reopen.'' *See* action 203(c) of NACARA. The Department interprets this language to refer only to the time and number limitations on motions to reopen. Section 203(c) dealt only with those procedural aspects of *filing* a motion to reopen and did not alter the substantive requirements for *granting* a motion to reopen. Moreover, the requirement that an applicant establish *prima facie* eligibility for relief (in this case, suspension of deportation or special rule cancellation of removal) is a prerequisite for the granting of all motions to reopen. The statutory language that states the alien must have ''become eligible'' for suspension or cancellation as a result of NACARA requires that the alien be *prima facie* eligible for such relief. NACARA did not alter the requirement that there must be a showing of *prima facie* eligibility for the relief sought.

In order to be *prima facie* eligible for suspension of deportation or special rule cancellation of removal, the alien must not be subject to any statutory bars to such relief. Section 240A(c) of the INA, and section 244(f) of the INA as it existed prior to April 1, 1997, describe those aliens who are ineligible for suspension of deportation or cancellation of removal. For example, aliens who failed to depart voluntarily after receiving oral and written notice of the consequences of failing to depart and those who failed to appear for their hearings after receiving the required oral and written notices are statutorily barred from suspension of deportation or cancellation of removal. Thus, aliens statutorily barred from relief have no basis to reopen their cases.

Statutory bars to eligibility for suspension of deportation or cancellation of removal are not waived by the provisions of NACARA. The Attorney General has no authority to waive these statutory bars in the cases where they apply. Therefore, because those aliens subject to statutory bars to eligibility did not ''become eligible'' under NACARA, those additional bars to relief besides the aggravated felony bar are properly incorporated in 8 CFR section 3.43.

Requirement to State Ineligibility Pursuant to IIRIRA Section 309(c)(5)

Section 3.43(c) of the interim NACARA motion to reopen rule requires an alien seeking to reopen under NACARA to establish that he or she is (i) *prima facie* eligible for suspension or deportation or special rule cancellation of removal under NACARA; (ii) was or would be ineligible for relief but for the passage of NACARA; (iii) has not been convicted at any time of an aggravated felony; and (iv) falls within one of the six classes described elsewhere in the regulation. Many commenters objected to the second requirement, arguing that individuals should not be required to state a lack of eligibility but for NACARA. Commenters suggested that this requirement exceeded the scope of the statute and was unduly burdensome.

The second requirement arises from the Department's determination, based on the specific language in section 203(c), that only those persons who have ''become eligible'' for relief under NACARA are entitled to submit a motion to reopen under section 203(c). This analysis, discussed at length in the supplementary information accompanying the interim rule, requires a determination at the time the motion to reopen is considered that an individual actually became eligible for relief as a result of NACARA. *See* 63 FR 31890, 31891–92. To facilitate this determination, the Department has requested that the initial motion include some indication that the alien was ineligible for relief at the time of his or her immigration proceedings and subsequently became eligible for relief as a result of NACARA.

Such a showing results in a minimal burden. For instance, in many cases, an alien seeking to reopen his or her case would have been ineligible for relief as a result of the ''stop-time rule,'' discussed previously in the supplementary information in the

interim rule. *See also, Matter of NJB,* Interim Decision 3309 (BIA 1997), *vacated by* the Attorney General on July 10, 1998. In those cases, the Department anticipates that information regarding the date of entry and the date the charging document was issued would establish that the individual was otherwise ineligible for relief, but for NACARA. Consequently, the showing necessary to meet this requirement will generally be minimal and will expedite the adjudicative process.

Adjudication of Motions To Reopen Filed Under NACARA Section 203

Finally, thirteen commenters stated that all persons eligible to file a motion to reopen were entitled to have their cases reopened. The commenters suggest that Immigration Judges should not be allowed to deny the motion to reopen at the outset without a hearing on the merits of the applicant's suspension or cancellation claim. Those commenting seek to avoid denial of inadequate motions prepared in a short time frame. They also argue the complicated requirements of a NACARA motion to reopen may be too difficult for *pro se* aliens.

The passage of NACARA did not alter the general procedures for filing and considering motions to reopen. It made special provisions to permit a certain group of people who would otherwise be prevented by statute and regulation to submit a motion to reopen. Nothing in section 203(c) indicates that Congress intended for all such motions to be automatically granted.

Congress has the power to affect motions practice, and in fact has done so. In enacting IIRIRA in 1996, Congress statutorily codified EOIR's regulatory 90 day time limit on motions to reopen. Congress, when it passed NACARA, gave no guidance, nor did it amend procedural matters for motions to reopen before EOIR, except to set a statutory deadline to file motions to reopen under section 203 of NACARA. It could have made additional changes, other than lifting the one-time filing rule, but it did not. Accordingly, there is no reason to believe that Congress intended to treat differently those existing procedural matters on motions to reopen. Therefore, it is the obligation of the Immigration Court to comply with the existing regulations and assess *prima facie* eligibility under NACARA prior to granting a motion to reopen.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because it affects individual aliens, not small entities.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Reinforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Attorney General has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f) and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 12612

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

Executive Order 12988: Civil Justice Reform

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

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

Accordingly, part 3 of chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 5 U.S.C. 301; 8 U.S.. 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Public Law 105–100.

2. Section 3.43 is amended by:
a. Revising paragraph (b)(4)(v);
b. Revising paragraph (b)(4)(vi);
c. Revising paragraph (c)(2), and
d. Adding paragraph (c)(3) to read as follows:

§ 3.43 Motion to reopen of suspension of deportation and cancellation of removal pursuant to section 203(c) of the Nicaraguan Adjustment and Central American Relief Act (NACARA).

* * * * *

(b)(4) * * *

(v) The spouse or child of a person who is described in paragraphs (b)(4)(i) through (b)(4)(iv) of this section and such person is *prima facie* eligible for and has applied for suspension of deportation or special rule cancellation of removal under section 203 of NACARA.

(vi) An unmarried son or daughter of a person who is described in paragraph (b)(4)(i) through (b)(4)(iv) of this section and such person is *prima facie* eligible for and has applied for suspension of deportation or special rule cancellation of removal under section 203 of NACARA. If the son or daughter is 21 years of or older, the son or daughter must have entered the United States on or before October 1, 1990.

(c) * * *

(2) A motion to reopen filed pursuant to paragraph (c)(1) shall be considered complete at the time of submission of an application for suspension of deportation or special rule cancellation of removal and accompanying documents. Such application must be submitted no later than 150 days after the effective date of the rule implementing section 203 of NACARA. Aliens described in paragraph (b)(4)(v) or (b)(4)(vi) of this section must include, as part of their submission, proof that their parent or spouse is *prima facie* eligible and has applied for relief under section 203 of NACARA.

(3) The Service shall have 45 days from the date the alien serves the

Immigration Court with either the EOIR Form 40 or the Form I–881 application for suspension of deportation or special rule cancellation of removal to respond to that completed motion. If the alien fails to submit the required application within 150 days after the effective date of the rule implementing section 203 of NACARA, the motion will be denied as abandoned.

Dated: March 4, 1999.

Eric H. Holder, Jr.,

Deputy Attorney General.

[FR Doc. 99–6633 Filed 3–19–99; 8:45 am]

BILLING CODE 4410–30–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Disaster Loan Program; Correction

AGENCY: Small Business Administration (SBA).

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to the final regulation published in the **Federal Register** on January 31, 1996, 61 FR 3304, concerning the SBA's disaster regulations. This regulation is contained in § 123.3 of volume 13 of the Code of Federal Regulations. Under the disaster regulations, a State Governor must make certification of economic injury within 120 days of the physical disaster. This correction reinstates a provision which gives the SBA Administrator authority, in cases of undue hardship, to accept a Governor's certification more than 120 days after the disaster.

DATES: Effective March 22, 1999.

FOR FURTHER INFORMATION CONTACT: Herbert L. Mitchell, 202–205–6734.

SUPPLEMENTARY INFORMATION: Under SBA's disaster regulations, a State Governor may certify to the SBA that small businesses suffered substantial economic injury as a result of a disaster in the State. The Governor must submit such certification to the local SBA disaster office within 120 days of the disaster. That office evaluates the request and makes its recommendation to SBA's Headquarters office. The SBA Administrator takes final action and decides whether to make an economic injury disaster declaration. Under disaster regulations prior to 1996, the SBA Administrator had authority, in cases of undue hardship, to accept a Governor's certification after the 120-day period had elapsed. When SBA revised its regulations in 1996, it inadvertently omitted this provision from 13 CFR 123.3 (formerly § 123.23(c) prior to 1996). This correction reinstates the SBA Administrator's authority to accept a Governor's certification after 120 days.

Before a Governor submits a request for SBA to declare an economic injury, the affected small businesses in the community must prepare and submit documentation with respect to the economic injuries they have incurred as a result of a disaster in the State. There are times when the paperwork is delayed in getting to the State Governor, with the result that the Governor's request to SBA arrives more than 120 days after the disaster incident. Thus, the SBA Administrator needs authority to accept late requests from a governor to protect small businesses. This technical correction will allow the SBA Administrator to act so that small businesses would not suffer undue economic hardship.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C., et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch 35)

SBA certifies that this correction does not constitute a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual effect on the economy of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA certifies that this correction will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* SBA certifies that this correction does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

For purposes of Executive Order 12612, SBA certifies that this proposed rule has no federalism implications warranting preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this correction is drafted, to the extent practicable, to comply with the standards set forth in section 2 of that Order.

List of Subjects in 13 CFR Part 123

Disaster assistance, loan programs-businesses, small businesses.

For the reasons set forth in the above preamble, SBA amends 13 CFR part 123 as follows:

PART 123—DISASTER LOAN PROGRAM

1. The authority citation for part 123 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c) and 636(f); Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739.

2. Amend § 123.3 by adding a new sentence at the end of paragraph (a)(4) to read as follows:

§ 123.3 How are disaster declarations made?

(a) * * *

(4) * * * The Administrator may, in a case of undue hardship, accept such request after 120 days have expired.

* * * * *

Dated: March 16, 1999.

Fred Hochberg,

Deputy Administrator.

[FR Doc. 99–6856 Filed 3–19–99; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–56–AD; Amendment 39–11079; AD 99–06–16]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–5 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to CFM International CFM56–5 series turbofan engines, that reduces the low cycle fatigue (LCF) retirement lives for certain high pressure turbine rotor (HPTR) front air seals, and provides a drawdown schedule for those affected parts with reduced LCF retirement lives. This amendment is prompted by results of a refined life analysis performed by the manufacturer that revealed minimum calculated LCF lives significantly lower than the published LCF retirement lives. The actions specified by this AD are intended to prevent a LCF failure of the HPTR front air seal, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective April 21, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of April 21, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7138; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to CFM International CFM56–5 series turbofan engines was published in the **Federal Register** on September 18, 1998 (63 FR 49879). That action proposed to require reducing the low cycle fatigue (LCF) retirement lives for certain high pressure turbine rotor (HPTR) front air seals, and provide a drawdown schedule for those affected parts with reduced LCF retirement lives in accordance with CFM International CFM56–5 Service Bulletin No. 72–541, dated July 27, 1998.

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

One commenter states that the total cost impact of the proposed AD on the industry will be greater than that presented in the proposed AD's economic analysis. This commenter states that numerous engines currently in their fleet, and engines to be delivered in 1999, will require premature removal due to the life reduction of the HPTR front air seal. The commenter further states that engines prematurely removed will still have serviceable life remaining at the time of removal. The FAA does not concur. The proposed AD's economic analysis already accounts for the cost impact associated with a premature removal of the HPTR front air seal due to the life reduction. Therefore, the FAA has determined that there is no need to revise the cost impact section of the AD.

One commenter supports the AD as proposed.

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

There are approximately 863 engines of the affected design in the worldwide fleet. The FAA estimates that 131 engines installed on aircraft of U.S. registry would be affected by this AD, and that it will not take any additional work hours per engine to accomplish the required actions. Assuming that the parts cost is proportional to the reduction of the LCF retirement lives, the required parts would cost approximately $14,000 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,834,000.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–06–16 CFM International: Amendment 39–11079. Docket 98–ANE–56–AD.

Applicability: CFM International CFM56–5 series turbofan engines installed on, but not limited to, Airbus A319 and A320 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 (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a low cycle fatigue failure of the high pressure turbine rotor (HPTR) front air seal, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Remove from service CFM International CFM56–5–A1 and -5–A1/F HPTR front air seals, Part Number (P/N) 1319M11P06, 1319M11P07, 1319M11P08, and 1319M11P09, and CFM56–5–A1 HPTR front air seals, P/N 1319M11P05, and replace with a serviceable part, in accordance with CFM56–5 Service Bulletin (SB) No. 72–541, dated July 27, 1998, as follows:

(1) For seals that have accumulated less than 4,000 cycles since new (CSN) on the effective date of this AD, remove the seal from service prior to accumulating 11,000 CSN.

(2) For seals that have accumulated 4,000 CSN or more, but less than 11,000 CSN on the effective date of this AD, accomplish the following:

(i) For engines that have an engine shop visit (ESV) prior to the seal accumulating 11,000 CSN, remove the seal from service prior to the seal accumulating 11,000 CSN.

(ii) For engines that do not have an ESV prior to the seal accumulating 11,000 CSN, remove the seal from service prior to the seal accumulating 7,000 cycles in service (CIS) after the effective date of this AD, or prior to the seal accumulating 15,300 CSN, whichever occurs first.

(3) For seals that have accumulated 11,000 CSN or more on the effective date of this AD, remove the seal from service at the next ESV, or prior to the seal accumulating 15,300 CSN, whichever occurs first.

(b) Remove from service CFM International CFM56–5A3 HPTR front air seals, P/N 1319M11P06, 1319M11P07, 1319M11P08, and 1319M11P09, and replace with a serviceable part, in accordance with CFM56–

5 SB No. 72–541, dated July 27, 1998, as follows:

(1) For seals that have accumulated less than 3,000 CSN on the effective date of this AD, remove the seal from service prior to accumulating 7,700 CSN.

(2) For seals that have accumulated 3,000 CSN or more, but less than 7,700 CSN on the effective date of this AD, accomplish the following:

(i) For engines that have an ESV prior to the seal accumulating 7,700 CSN, remove the seal from service prior to the seal accumulating 7,700 CSN.

(ii) For engines that do not have an ESV prior to the seal accumulating 7,700 CSN after the effective date of the AD, remove the seal from service prior to the seal accumulating 4,700 CIS after the effective date of this AD, or prior to the seal accumulating 13,000 CSN, whichever occurs first.

(3) For seals that have accumulated 7,700 CSN or more on the effective date of this AD, remove the seal from service at the next ESV, or prior to the seal accumulating 13,000 CSN, whichever occurs first.

(c) For CFM56–5A4, –5A4/F, –5A5, and –5A5/F HPTR front air seals, P/N 1319M11P05, 1319M11P06, 1319M11P07, 1319M11P08, and 1319M11P09, that have previously operated in CFM56–5–A1, –5–A1/F, or –5A3 engine models, recalculate the HPTR front air seal total cycles remaining using 11,000 cycles for the CFM56–5–A1 and CFM56–5–A1/F engine models, and 7,700 cycles for the CFM56–5A3 engine model, in accordance with CFM56–5 SB No. 72–541, dated July 27, 1998, within 750 CIS after the effective date of this AD.

Note 2: The current HPTR front air seal retirement life for the CFM56–5A4, –5A4/F, –5A5, and –5A5/F engine models is 9,100 cycles, and is not affected by this AD.

Note 3: For additional information on recalculating the HPTR front air seal total cycles remaining see Chapter 05, Section 05–11–00, of the CFM56–5 series Engine Shop Manual, CFMI–TP.SM.7.

(d) This AD establishes new LCF retirement lives of 11,000 cycles for CFM56–5–A1 and –5–A1/F HPTR front air seals, and 7,700 cycles for CFM56–5A3 HPTR front air seals, which is published in Chapter 05, Section 05–11–03, of the CFM56–5 series Engine Shop Manual, CFMI–TP.SM.7. The following conditions also apply:

(1) Except as provided in paragraph (g) of this AD, no alternative retirement lives may be approved for the CFM56–5–A1, –5–A1/F, and –5A3 HPTR front air seals.

(2) After the effective date of this AD, no CFM56–5–A1 and –5–A1/F HPTR front air seals may be installed or reinstalled on an engine if the seals have accumulated more than 11,000 CSN.

(3) After the effective date of this AD, no CFM56–5A3 HPTR front air seals may be installed or reinstalled on an engine if the seals have accumulated more than 7,700 CSN.

(e) For the purpose of this AD, an ''engine shop visit'' is defined as the induction of an engine into the shop for maintenance involving the separation of any major mating engine flanges, or the removal of a disk or spool, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

(f) For the purpose of this AD, a ''serviceable part'' is defined as one that has not exceeded its respective new retirement life as set out in this AD.

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

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

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

(i) The actions required by this AD shall be done in accordance with the following CFM International SB:

Document No.	Pages	Date
CFM56–5 SB No. 72–541 ..... Total Pages: 8.	1–8	July 27, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW, suite 700, Washington, DC.

(j) This amendment becomes effective on April 21, 1999.

Issued in Burlington, Massachusetts, on March 11, 1999.

David A. Downey,

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

[FR Doc. 99–6555 Filed 3–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–171–AD; Amendment 39–11082; AD 99–06–18]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, –400D, and –400F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400, –400D, and –400F series airplanes, that requires modification of the P212 and P213 panels of the cabin pressure control system. For certain airplanes, this amendment also requires modification of the P5, P6, and P7 panels, and the W4701, W4703, and W4908 wire bundles, as applicable. This amendment is prompted by a report of in-flight loss of cabin pressurization control due to a single failure of the auxiliary power unit (APU) battery. The actions specified by this AD are intended to prevent loss of control of the cabin pressurization system, which could result in rapid depressurization of the airplane. Such rapid depressurization could result in deleterious physiological effects on the passengers and crew; and airplane diversions, which represent an increased risk to the airplane, passengers, and crew.

DATES: Effective April 26, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 26, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules

Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Clayton R. Morris, Jr., Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2794; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–400, –400D, and –400F series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on May 12, 1998 (63 FR 26100). That action proposed to require modification of the P212 and P213 panels of the cabin pressure control system. For certain airplanes, that action also proposed to require modification of the P5, P6, and P7 panels, and the W4701, W4703, and W4908 wire bundles, as applicable.

Comments

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

Support for the Proposal

One commenter supports the proposed rule. Another commenter offers no comments to the proposed rule, because it does not own or operate the subject airplanes.

Requests To Extend Compliance Time

One commenter requests that the FAA extend the proposed compliance time for the modification from 180 days after the effective date of this AD to 18 months after the effective date of this AD, to reduce the impact on its operations and the cost associated with accomplishment of the proposed actions. The commenter states that the proposed 180-day compliance time would make it necessary to schedule approximately five of its airplanes for special maintenance visits, which the commenter estimates would cost $60,000 per airplane. The commenter states that an 18-month compliance time would allow the modifications proposed in the supplemental NPRM to be accomplished during a regularly scheduled ''C'' check.

The FAA partially concurs with the commenter's request to extend the compliance time. The FAA has determined that the compliance time may be extended somewhat. The FAA finds that extending the compliance time from 180 days after the effective date of this AD to 12 months after the effective date of this AD will not adversely affect safety and will allow the modifications to be performed, in the majority of cases, during a regularly scheduled maintenance visit. Therefore, paragraphs (a) and (b) of the final rule have been revised to specify a compliance time of 12 months after the effective date of this AD. However, with regard to the commenter's cost estimate, the FAA points out that operators may take advantage of special maintenance visits to accomplish other deferred maintenance tasks, which would reduce the time necessary to accomplish those deferred tasks during regularly scheduled checks. The commenter's estimate of additional costs associated with special visits does not take this into account.

Another commenter also requests that the FAA extend the proposed compliance time for accomplishment of the actions to 18 months after the effective date of this AD. The commenter states that Boeing Service Bulletin 747–21–2268 should be accomplished prior to the accomplishment of Boeing Alert Service Bulletin 747–21A2381, dated June 27, 1996 (which was referenced as an appropriate source of service information in the supplemental NPRM). The commenter states that Boeing Alert Service Bulletin 747–21A2381 can be accomplished within the 180-day compliance time proposed in the supplemental NPRM only if Boeing Service Bulletin 747–21–2268 has already been accomplished. The commenter requests that the compliance time be extended to provide for accomplishment of both Boeing Service Bulletin 747–21–2268 and Boeing Alert Service Bulletin 747–21A2381.

The FAA does not concur that Boeing Service Bulletin 747–21–2268 must be accomplished prior to accomplishment of Boeing Alert Service Bulletin 747–21A2381. The FAA has determined that Boeing Alert Service Bulletin 747–21A2381 provides specific instructions on how to accomplish the actions specified in the alert service bulletin both with and without prior incorporation of the actions specified in Boeing Service Bulletin 747–21–2268. In addition, the FAA does not require accomplishment of Boeing Service Bulletin 747–21–2268. Therefore, the FAA finds that it is not necessary to extend the compliance time to allow for accomplishment of Boeing Service Bulletin 747–21–2268. However, as stated previously, the compliance time for the actions required by this final rule has been extended to 12 months after the effective date of this AD to allow for accomplishment of the required actions during regularly scheduled maintenance visits.

Conclusion

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

Cost Impact

There are approximately 351 Model 747–400, –400D, and –400F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 43 airplanes of U.S. registry will be affected by this AD.

For all airplanes, it will take approximately 8 work hours per airplane to accomplish the required modification of the P212 and P213 panels, at an average labor rate of $60 per work hour. Required parts will cost approximately $389 per airplane. Based on these figures, the cost impact of this modification required by this AD on U.S. operators is estimated to be $37,367, or $869 per airplane.

For certain airplanes, it will take approximately 47 work hours per airplane to accomplish the required modification of the P5, P6, and P7 panels, and the W4701, W4703, and W4908 wire bundles, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,529 per airplane. Based on these figures, the cost impact of this modification required by this AD on U.S. operators is estimated to be $4,349 per airplane.

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

Regulatory Impact

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

implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–06–18 Boeing: Amendment 39–11082. Docket 96–NM–171–AD.

Applicability: Model 747–400, –400D, and –400F series airplanes; as identified in Boeing Alert Service Bulletin 747–21A2381, dated June 27, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 loss of control of the cabin pressurization system, which could result in rapid depressurization of the airplane and consequent deleterious physiological effects on the passengers and crew; and airplane diversions, which represent an increased risk to the airplane, passengers, and crew, accomplish the following:

(a) Within 12 months after the effective date of this AD: Modify the P212 and P213 panels of the cabin pressure control system as specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 747–21A2381, dated June 27, 1996.

(1) For Groups 1 through 7 airplanes, as identified in the alert service bulletin: Change the wiring in the P212 and P213 panels; replace the existing two-pole relays with new four-pole relays; and perform a test of both panels.

(2) For Group 8 airplanes, as identified in the alert service bulletin: Change the wiring in the P212 panel; replace the existing two-pole relays with new four-pole relays; replace the existing P213 panel with a new P213 panel; and perform a test of both panels.

(b) For airplanes having line positions 696 through 1021 inclusive: Within 12 months after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2), as applicable, of this AD; in accordance with Boeing Service Bulletin 747–24–2193, dated January 26, 1995; as revised by Notices of Status Change (NSC) 747–24–2193 NSC 1, dated April 13, 1995, 747–24–2193 NSC 2, dated October 5, 1995, 747–24–2193 NSC 3, dated November 22, 1995, 747–24–2193 NSC 4, dated December 21, 1995, 747–24–2193 NSC 5, dated May 2, 1996, and 747–24–2193 NSC 6, dated March 13, 1997; or Alert Service Bulletin 747–24A2193, Revision 1, dated June 19, 1997.

(1) For all airplanes: Modify the wiring of the P5, P6, and P7 panels; modify the wiring in the W4701 and W4908 wire bundles; and install diodes in the P6 panel.

(2) For Groups 1 and 2 airplanes identified in paragraph I. of the Accomplishment Instructions of the service bulletin or alert service bulletin: Modify the wiring in the W4703 wire bundle.

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

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

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

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–21A2381, dated June 27, 1996; and Boeing Service Bulletin 747–24–2193, dated January 26, 1995; as revised by Notices of Status Change (NSC) 747–24–2193 NSC 1, dated April 13, 1995, 747–24–2193 NSC 2, dated October 5, 1995, 747–24–2193 NSC 3, dated November 22, 1995, 747–24–2193 NSC 4, dated December 21, 1995, 747–24–2193 NSC 5, dated May 2, 1996, and 747–24–2193 NSC 6, dated March 13, 1997; or Boeing Alert Service Bulletin 747–24A2193, Revision 1, dated June 19, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 26, 1999.

Issued in Renton, Washington, on March 12, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–6714 Filed 3–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–19]

Establishment of Class D Airspace and Modification of Class E Airspace; Bozeman, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D surface airspace and modifies Class E surface airspace at Gallatin Field, Bozeman, MT. The Class D surface area is established to accommodate the procedures associated with the operation of a new Airport Traffic Control Tower (ATCT) at the airport. The modification of the Class E surface area amends the effective hours from continuous to part-time, the effective hours coinciding with the hours that the tower is closed. The effect of this action is to clarify when two-way radio communication with the ATCT is required and to provide adequate Class D airspace for procedures when the tower is open.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–19, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On January 8, 1999, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by establishing a Class D surface area and by modifying the Bozeman, MT, Class E surface area (64 FR 1142). This establishment of the Class E surface area provides the airspace necessary to allow terminal operations when the ATCT is in operation. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class D surface airspace areas and Class E surface airspace areas are published in paragraph 5000 and paragraph 6002, respectively, of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class D airspace at Bozeman, MT, by providing a Class D surface area in conjunction with a new ATCT. This action also modifies the Class E surface area by amending the effective hours to coincide with the hours that the ATCT is closed. The intended effect of this proposal is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations at Gallatin Field between the terminal and en route transition stages. The intended effect of this rule is to clarify when two-way radio communication with the ATCT is required.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 5000 General

ANM MT D Bozeman, MT [New]

Bozeman, Gallatin Field, MT
(Lat. 45°46′37″ N, long. 111°09′11″ W)
Bozeman ILS Localizer
(Lat. 45°46′01″ N, long. 111°08′13″ W)

Within a 4.4-mile radius of Gallatin Field, and within 3 miles each side of the Bozeman ILS northwest localizer course extending from the 4.4-mile radius to 14 miles northwest of Gallatin Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

ANM MT E2 Bozeman, MT [Revised]

Bozeman, Gallatin Field, MT
(Lat. 45°46′37″ N, long. 111°09′11″ W)
Bozeman ILS Localizer
(Lat. 45°46′01″N, long. 111°08′13″W)

Within a 4.4-mile radius of Gallatin Field, and within 3 miles each side of the Bozeman ILS northwest localizer course extending from the 4.4-mile radius to 14 miles northwest of Gallatin Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on March 10, 1999.

Daniel A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 99–6939 Filed 3–19–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–34]

Revocation of Class E Airspace, Revision of Class D Airspace; Torrance, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; delay of effective date.

SUMMARY: This document gives notice of the delayed effective date of a direct final rule which revokes the Class E airspace arrival extensions and revises the Class D airspace area for Torrance Municipal Airport, CA.

DATES: The direct final rule published in 64 FR 3206 is effective on 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Air Traffic Division, Airspace Branch, AWP–520.10, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone: (301) 725–6613.

SUPPLEMENTARY INFORMATION: On January 21, 1999, the FAA published in the **Federal Register** a direct final rule; request for comments which revokes the Class E airspace arrival extensions and revises the Class D airspace area for Torrance Municipal Airport, Torrance, CA. (FR Document 99–1355, 64 FR 3206, Airspace Docket No. 98–AWP–34).

The intended effect of this action is to incorporate the Class E airspace arrival extensions (E4) into the Class D airspace area associated with Torrance Municipal Airport and lower the ceiling of the reconfigured Class D airspace area to 2,400 feet Mean Sea Level (MSL). An airspace review and analysis of Torrance has made this action necessary. In accordance with FAA Order 7400.2D, Procedures for Handling Airspace Matters, if the length of an arrival extension is less than 2 miles from the surface area, it shall remain a part of the basic surface area. This is the case at Torrance Municipal Airport. The existing Class E airspace for Torrance was published and charted in error as

an arrival extension and should be a part of the Class D surface area. The revised altitude of 2,400 feet MSL will provide aircraft the opportunity to operate over Torrance Class D airspace at 2,500 feet MSL and above without having to obtain permission from Torrance Airport Traffic Control Tower. This is a commonly used altitude in this area for aircraft flying off shore to avoid the Los Angeles Class B airspace FAA. Class D airspace areas are published in Paragraph 5000 and Class E4 airspace areas are published in Paragraph 6004 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be subsequently removed from this order. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on March 25, 1999.

No adverse comments were received, and thus this document gives notice that this direct final rule will become effective on the revised date of May 20, 1999.

Issued in Los Angeles, California on March 5, 1999.

Ronald J. Popper,

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

[FR Doc. 99–6941 Filed 3–19–99 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Chapter I

[T.D. 99–27]

RIN 1515–AB84

Technical Corrections Regarding Customs Organization

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document makes final, with certain technical corrections, the interim amendments to the Customs Regulations that reflected Customs new organizational structure. The changes are nonsubstantive or merely procedural in nature.

EFFECTIVE DATE: These changes are effective March 22, 1999.

FOR FURTHER INFORMATION CONTACT: Jerry Laderberg, Entry and Carrier Rulings Branch, Office of Regulations and Rulings (202) 927–2077, or Gregory R. Vilders, Regulations Branch, Office of Regulations and Rulings (202) 927–2340.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 1995, Customs published interim regulations in the **Federal Register** (T.D. 95–77 at 60 FR 50008 and T.D. 95–78 at 60 FR 50020) to implement its new field organization, effective for fiscal year 1996. Because the regulations concerned matters related to agency management and personnel, notice, public procedure, and a delayed effective date were not necessary, and the regulations became effective on October 1, 1995. Even though notice and public procedure were not required, Customs did solicit comments on the interim regulations. The comment period closed November 27, 1995. Only one comment was received, which addressed a very narrow issue concerning brokers' permits. The comment received and Customs response are set forth below.

Discussion of Comment

Comment: The one comment received questioned why Customs stated in the BACKGROUND portion of the interim regulations (T.D. 95–77) that it was eliminating, for the most part, districts and regions from its field organization to place more emphasis on field operations, and then retained this distinction for purposes of brokers' permits. The commenter urged that the 20 Customs Management Centers' geographical boundaries be adopted as the basis for issuing broker permits, rather than use the Service Port boundaries. The commenter objected to the continued use of the terms ''district'' and ''region'' for the limited purposes of regulating the permitting of customs brokers (part 111 of the Customs Regulations) and carriers, cartmen, and lightermen (part 112 of the Customs Regulations), as not being within the spirit of Customs reorganization or the National Performance Review.

Customs Response: Customs does not agree with this assessment. As more fully stated in the BACKGROUND portion of the interim regulations, districts and regions will still exist as geographical descriptions for limited purposes such as for broker permits and certain cartage and lighterage purposes. In the case of brokers, Customs decided to preserve the district permit and region waiver procedures because these procedures are mandated by statute (*see,* 19 U.S.C. 1641). Also, during the course of the reorganization, Customs consulted with the Customs brokerage industry and was informed that the industry's preference, in the short-term, was to retain the current scheme until it had time to assess the effects of both the new field structure and the automation initiatives made pursuant to the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act (provisions pertaining to the National Customs Automation Program are at 19 U.S.C. 1411). Customs believes that its consultation with the Customs brokerage industry was in the spirit of Customs reorganization and the National Performance Review. Accordingly, at this time no further change to the Customs Regulations is made based on the comment received.

Changes to Interim Regulations

In reviewing the interim regulations, Customs finds that further changes to 95 sections of the regulations must be made to correct grammatical and nomenclature errors. Following is a summary of those changes.

Further nomenclature changes are made to more than 80 sections and Appendices: §§ 4.14, 4.80a, 4.80b, 10.5, 10.37, 10.39, 12.8, 12.39, 18.8, 18.21, 101.3, 103.0, 103.1, 103.5, 103.7, 103.9, 103.31, 111.13, 111.19, 111.95, 111.96, 113.14, 113.15, 113.38, 113.39, 115.11, 115.13, 115.30, 115.40, 115.51, 115.65, 122.14, 122.165, 122.176, 125.42, 132.14, 133.2, 133.12, 133.32, 134.54, 145.4, 146.2, 146.4, 146.6, 146.83, 162.32, 162.42, 162.44 through 162.50, 162.52, 162.64, 162.65, 162.71, 162.72, 162.74 through 162.79, 162.79b, 171.12, 171.15, 171.21 through 171.23, 171.31, 171.33, and 171.52, Appendices A–C to Part 171, §§ 172.2, 172.12, 172.21, 172.22, 172.31, 172.33, 175.25, 177.2, and 177.26. These changes, for the most part, continue the conversion of ''district director'' to ''port director'' or to ''Fines, Penalties, and Forfeitures Officer'', replace an obsolete term (''collector'') with ''port director'', replace the Office of Inspection and Control with the Office of Field Operations, and further inform the public of responsible offices and personnel, e.g., ''Disclosure Law Officer'' for Regulations and Disclosure Law Branch. Since publication of the

interim regulations, Customs Headquarters has been relocated from 1301 Constitution Avenue to 1300 Pennsylvania Avenue in Washington, D.C. Accordingly, this street address change is made to the 19 sections where a writing address is provided. The change to the ports-of-entry listing at § 101.3 entails moving the listing for ''Longview'' from Oregon to Washington, which is where the port is physically located. Also, a change is made to § 103.1 to show the correct street address for the Boston reading room facility where public documents are maintained.

Grammatical changes to make the text read more clearly are made to 9 sections: §§ 4.41, 10.172, 19.2, 19.3, 19.40, 24.4, 24.36, 101.0, and 101.4. Most of these changes are in the form of substituting prepositional phrases, *i.e.*, replacing ''in'' with ''at'' or removing redundant references to port directors at ports.

Inapplicability of the Delayed Effective Date Requirement, the Regulatory Flexibility Act, and Executive Order 12866

Inasmuch as these amendments merely advise the public of Customs field and Headquarters organization, and make certain technical corrections to the organization that is currently in place under interim regulations, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d)(2) and (3) for dispensing with the requirement for a delayed effective date. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Drafting Information. The principal author of this document was Gregory R. Vilders, Attorney, Office of Regulations and Rulings, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Exports, Foreign trade statistics, Imports, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

19 CFR Part 132

Agriculture and agricultural products, Customs duties and inspection, Quotas.

19 CFR Part 146

Customs duties and inspection, Entry, Foreign trade zones, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

As discussed in the preamble and under the authority of 19 U.S.C. 66 and 1624, the interim rule amending 19 CFR parts 4, 19, 24, 101, 103, 111, 112, 113, 118, 122, 127, 141, 142, 146, and 174 of the Customs Regulations (19 CFR 4, 19, 24, 101, 103, 111, 112, 113, 118, 122, 127, 141, 142, 146, and 174), published on September 27, 1995, in the **Federal Register** at 60 FR 50008, and the interim rule amending chapter I of the Customs Regulations (19 CFR chapter I) published on September 27, 1995, in the **Federal Register** at 60 FR 50020, are adopted as final with the following changes:

PART 101—GENERAL PROVISIONS

1. The authority citation for part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

§ 101.3 [Amended]

2. Section 101.3(b)(1) is amended by removing the entry for ''Longview'' under the state of Oregon and adding it, in appropriate alphabetical order, under the state of Washington.

§ 101.4 [Amended]

3. In § 101.4(d), the last sentence is amended by removing the words ''in a port'' and adding the word ''local'' before the words ''port director''.

PART 132—QUOTAS

1. The general authority citation for part 132 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

* * * * *

§ 132.14 [Amended]

2. In § 132.14(a)(4):

a. The introductory text of paragraph (a)(4)(i) is amended by removing the words '', the port director'';

b. Paragraph (a)(4)(i)(A) is amended by removing the word ''May'' and adding, in its place, the words ''The port director may'' and by removing the comma at the end and adding, in its place, a semicolon;

c. Paragraph (a)(4)(i)(B) is amended by removing the word ''Shall'' and adding, in its place, the words ''The port director shall'' and by removing the word '', and'' at the end and adding, in its place, a semicolon;

d. Paragraph (a)(4)(i)(C) is amended by removing the word ''May'' and adding, in its place, the words ''The port director may'' and by removing the period at the end and adding, in its place, a semicolon followed by the word ''and'';

e. The introductory text of paragraph (a)(4)(ii) is amended by removing the words '', the port director'';

f. Paragraph (a)(4)(ii)(A) is amended by removing the word ''Shall'' and adding, in its place, the words ''The port director shall'' and by removing the word '', and'' at the end and adding, in its place, a semicolon; and

g. Paragraph (a)(4)(ii)(B) is amended by removing the word ''May'' and adding, in its place, the words ''The port director may'' and by removing the period at the end and adding, in its place, a semicolon followed by the word ''and''.

PART 146—FOREIGN TRADE ZONES

1. The authority citation for part 146 continues to read as follows:

Authority: 19 U.S.C. 66, 81a–81u, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

2. Section 146.1(b) is amended by removing the numerical designation for each paragraph, alphabetizing the 23 existing entries, and by adding, in appropriate alphabetical order, the following definition:

§ 146.1 Definitions.

* * * * *

(b) * * *

Port Director. For those foreign trade zones located within the geographical limits of a port of entry, the term ''port director'' means the director of that port of entry. For those foreign trade zones located outside the geographical limits of a port of entry, the term ''port director'' means the director of the port of entry geographically nearest to where the foreign trade zone is located.

* * * * *

3. In the list below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add, in their place, the words indicated in the right column; when there are no replacement words, the ''Add'' column will be blank:

Section	Remove	Add
4.14(b)(2)(ii), (d)(1)(v), and (d)(2)(iii)	Entry and Carrier Rulings	Entry Procedures and Carriers
4.41(b) and (c)	in which	where
4.80a(d)	Entry and Carrier Rulings	Entry Procedures and Carriers
4.80b(b)	Entry and Carrier Rulings	Entry Procedures and Carriers
10.5 heading	district director's	port director's
10.37 third sentence	Tariff Classification Appeals	Commercial Rulings
10.37 fourth sentence	the port directors	a Fines, Penalties, and Forfeitures Officer's
10.39(d)(1) first sentence, and (e) second sentence.	port director	Fines, Penalties, and Forfeitures Officer
10.39(d)(1) second sentence, (e) introductory text, (e)(1)–(3), and (f).	Fines, Penalties, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
10.172	port director	the port director
12.8(b)	port director	Fines, Penalties, and Forfeitures Officer
12.39(b)(4)	the district directors	port directors
18.8(d) and (e)(2) last sentence	Fines, Penalties, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
18.21(c)	collector	port director
19.2(a)	port director wherein	director of the port nearest to where
19.3(a)	at a port	
	in which	nearest to where
19.40(b) first sentence	at a port	
	in which the facility is located	in which the facility is located, or if not within a port's limits, nearest to where the facility is located
24.4(h)(2) and (3)	in any port	at any port
24.36(e)(2)	in the same	at the same
101.0	and of	and
101.4(a) and (b)	in which such station or place is located	under whose jurisdiction the station or place falls
103.0	a disclosure law officer, the director of a service port, or the local public information officer.	the appropriate field officer
103.1	1301 Constitution	1300 Pennsylvania
	Boston, 100 Summer Street, Suite 1819, Boston, Massachusetts 02110.	Boston, 10 Causeway Street, Boston, Massachusetts 02222
103.5(d)	1301 Constitution	1300 Pennsylvania
103.5(d)(2) heading	Service ports	Field offices
103.5(d)(2)	at which	, or if the records concern the Office of Investigations, the special agent in charge, where
103.7(a)	1301 Constitution	1300 Pennsylvania
103.9(b)	1301 Constitution	1300 Pennsylvania
103.31(d)(1)(iii)	1301 Constitution	1300 Pennsylvania
103.31(d)(1)(iv)	Regulations and Disclosure Law Branch	Disclosure Law Officer
103.31(d)(2)(iii)	1301 Constitution	1300 Pennsylvania
111.13(b)	at each district office	
111.19(d)	Trade Compliance Division	Office of Field Operations
111.95	Fines, Penalties, and Forfeiture Officer or other Customs Service.	Fines, Penalties, and Forfeitures Officer
111.96(c)	at each port in which a broker has a permit to do business.	at the port through which the broker was granted the permit
113.14	Tariff Classification Appeals	International Trade Compliance
113.15	Tariff Classification Appeals	International Trade Compliance
113.38(c)(1)	Tariff Classification Appeals	International Trade Compliance
113.38(c)(4)	Commercial Rulings	International Trade Compliance
113.39 introductory text, (a), and (a)(5).	port director	port director or Fines, Penalties, and Forfeitures Officer
113.39(a) introductory text	Tariff Classification Appeals	International Trade Compliance
113.39(b)	district director and regional commissioner	port director and Fines, Penalties, and Forfeitures Officer
	Commercial Rulings	International Trade Compliance
115.11(b)	Inspection and Control, 1301 Constitution	Field Operations, 1300 Pennsylvania
115.13 introductory text	Inspection and Control, 1301 Constitution	Field Operations, 1300 Pennsylvania
115.30	Inspection and Control, 1301 Constitution	Field Operations, 1300 Pennsylvania
115.40	Inspection and Control, 1301 Constitution	Field Operations, 1300 Pennsylvania
115.51	Inspection and Control, 1301 Constitution	Field Operations, 1300 Pennsylvania
115.65	Inspection and Control, 1301 Constitution	Field Operations, 1300 Pennsylvania
122.14(a)(1)	regional commissioner, or his representative, of the region in.	director of the port, or his representative, at the port nearest to
122.165(b)	Entry and Carrier Rulings	Entry Procedures and Carriers
122.176(c) and (d)	Inspection and Control	Field Operations
125.42	Fines, Penalties, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
132.14(a)(4)(i)(D) and (a)(4)(ii)(C)	port director	Fines, Penalties, and Forfeitures Officer
133.2 introductory text	1301 Constitution	1300 Pennsylvania
133.12 introductory text	1301 Constitution	1300 Pennsylvania
133.32 introductory text	1301 Constitution	1300 Pennsylvania
134.54(b) and (c)	Fines, Penalties, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
145.4(b) and (d)	Fines, Penalties, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer

Section	Remove	Add
146.2	port director where the zone is located	appropriate port director
146.4(h)	port limits	district boundaries
146.6(a) first sentence	geographically nearest to where the zone is located	
146.83(a)	Tariff Classification Appeals	International Trade Compliance
162.32(a) and (c)	port director	Fines, Penalties, and Forfeitures Officer
162.42	port director	Fines, Penalties, and Forfeitures Officer
162.44(a)	director of	Fines, Penalties, and Forfeitures Officer having jurisdiction at
162.44(b)(1), (b)(1)(ii), (b)(2), and (c)	port director	Fines, Penalties, and Forfeitures Officer
162.45(a)(3) and (4) and (c)	port director	Fines, Penalties, and Forfeitures Officer
162.45(b)(1)	in the Customs district and the judicial district in which.	circulated at the Customs port and in the judicial district where
162.45(b)(2)	and in the customhouse at the headquarters port for the Customs district	
162.45a	port director	Fines, Penalties, and Forfeitures Officer
162.46(c)(1)	port director	Fines, Penalties, and Forfeitures Officer
162.46(d)	port director	Fines, Penalties, and Forfeitures Officer
162.47(a), (d), and (e)	port director	Fines, Penalties, and Forfeitures Officer
162.48(a)	port director	Fines, Penalties, and Forfeitures Officer
162.49(a)	port director	Fines, Penalties, and Forfeitures Officer
162.50(a)	port director	Fines, Penalties, and Forfeitures Officer
162.50(b) heading	districts	ports
162.50(b)	in another Customs district	at another port
	in such other district	at such other port
162.52(b)(2)	port director	Fines, Penalties, and Forfeitures Officer
162.52(b)(4)	port director	Fines, Penalties, and Forfeitures Officer
162.64	director of the port	Fines, Penalties, and Forfeitures Officer having jurisdiction
162.65(c), (d), (e) introductory text, and (e)(1).	port director	Fines, Penalties, and Forfeitures Officer
162.71(e)(4)	port director	Fines, Penalties, and Forfeitures Officer
162.72(a)	port director	Fines, Penalties, and Forfeitures Officer
162.74(a)(2)	Fines, Penalties and Forfeitures Officer	Fines, Penalties, and Forfeitures Officer
	Fines, Penalties and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
162.74(b), (c), (e), and (f)	Fines, Penalties and Forfeitures Officer	Fines, Penalties, and Forfeitures Officer
162.75(c), (d)(1), (d)(2) introductory text, (d)(2)(i), and (d)(3).	port director	Fines, Penalties, and Forfeitures Officer
162.76(a)	port director	Fines, Penalties, and Forfeitures Officer
162.77(a)	port director	Fines, Penalties, and Forfeitures Officer
162.78(a), (b), and (d)	port director	Fines, Penalties, and Forfeitures Officer
162.79(a) and (b)(1)	port director	Fines, Penalties, and Forfeitures Officer
162.79b	port director	Fines, Penalties, and Forfeitures Officer
171.12(a) and (e)	Fines, Penalty, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
171.15(a) introductory text	Fines, Penalty, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
171.15(a)(4)	1301 Constitution	1300 Pennsylvania
171.15(a)(4) and (7)	Fines, Penalties and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
171.21 heading and text	Fines, Penalty, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
171.22 heading and text	Fines, Penalty, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
171.23	1301 Constitution	1300 Pennsylvania
171.31	Fines, Penalty, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
171.33(a) introductory text, (b)(1) heading and text, (b)(2), and (c).	Fines, Penalty, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
171.52(d)	Fines, Penalty, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
Part 171 Appendix A: III, 9	Fines, Penalty, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
Part 171 Appendix B: (D)(1), (5), and (6).	Fines, Penalty, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
Part 171 Appendix B: (D)(6)	Fines, Penalty, and Forfeiture Officer's	Fines, Penalties, and Forfeitures Officer's
Part 171 Appendix C: I.A., I.D. and Note to I.D..	Fines, Penalty, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
Part 171 Appendix C: I.D. Note and I.G.	Director, International Trade Compliance Division	Chief, Penalties Branch, Customs Headquarters
Part 171 Appendix C: I.E.	Trade Operations	Trade Compliance
	Regulatory Procedures and Penalties	International Trade Compliance
Part 171 Appendix C: I.G.	Fines, Penalty, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
Part 171 Appendix C: XIII	Field Operations Division, Office of Trade Operations.	Office of Trade Compliance at Headquarters
172.2	Fines, Penalty, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
172.12(a)	Fines, Penalty, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
172.12(b)(1)	Fines, Penalty, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
172.21 heading	Fines, Penalty, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
172.21	port director	Fines, Penalties, and Forfeitures Officer
172.22 heading, (b)(3) introductory text, (b)(3)(ii), (d)(2) and (4).	Fines, Penalty, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
172.22(a)	Fines, Penalty, and Forfeiture Officers	Fines, Penalties, and Forfeitures Officers

Section	Remove	Add
172.31(a)	Fines, Penalty, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
172.33(a) introductory text, (b)(1) heading and text, (b)(1)(ii), (b)(2), and (c)(1).	Fines, Penalty, and Forfeiture Officer	Fines, Penalties, and Forfeitures Officer
175.25(c)	district director	port director
177.2(b)(2)(ii)(C)	Tariff Classification Appeals	Commercial Rulings
177.26	1301 Constitution	1300 Pennsylvania

Raymond W. Kelley,

Commissioner of Customs.

Approved: February 17, 1999.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–6639 Filed 3–19–99; 8:45 am]

BILLING CODE 4820–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AF01

Administrative Review Process; Prehearing Proceedings and Decisions by Attorney Advisors; Extension of Expiration Date

AGENCY: Social Security Administration.

ACTION: Final Rules.

SUMMARY: These final rules extend the time period set out in our regulations during which attorney advisors in our Office of Hearings and Appeals (OHA) may conduct certain prehearing proceedings and, where the documentary record developed as a result of these proceedings warrants, issue decisions that are wholly favorable to the parties to the hearing in claims for Social Security or Supplemental Security Income (SSI) benefits based on disability. We are extending the date at which these rules will no longer be effective from April 1, 1999, until April 1, 2000. We are making no other changes to the rules.

EFFECTIVE DATE: These rules are effective March 22, 1999.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, Office of Process and Innovation Management, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–6243 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: On June 30, 1995, in an action undertaken to reduce the record numbers of requests for an administrative law judge (ALJ) hearing pending in our OHA hearing offices, we published final rules in the **Federal Register** (60 FR 34126) that authorize OHA's attorney advisors to conduct certain prehearing proceedings and, if a decision that is wholly favorable to the parties to the hearing may be issued at the completion of these proceedings, to issue such a decision. These regulations, which are codified at 20 CFR §§ 404.942 and 416.1442, included a provision stating that the rules would no longer be effective on June 30, 1997, unless the Commissioner of Social Security extended the expiration date of the provisions by publication of a final rule in the **Federal Register**. We subsequently published final rules in the **Federal Register** on June 30, 1997 (62 FR 35073), and June 30, 1998 (63 FR 35515), extending the date on which §§ 404.942 and 416.1442 would no longer be effective to July 1, 1998, and then to April 1, 1999.

In order to continue to maximize our ability to meet our hearing production goals, we have decided to extend the date on which these rules will no longer be effective from April 1, 1999, to April 1, 2000. The final rules amend the sunset provision in §§ 404.942 and 416.1442 (which expressly provides for extending the expiration date of those sections) to provide that the provisions authorizing prehearing proceedings and decisions by attorney advisors will no longer be effective on April 1, 2000, unless the provisions are extended by the Commissioner of Social Security by publication of a final rule in the **Federal Register**.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because these rules only extend the date on which the regulatory provisions concerning prehearing proceedings and decisions by attorney advisors will no longer be effective. These rules make no substantive change to those provisions. The current regulations expressly provide that the provisions may be extended. Therefore, opportunity for prior comment is unnecessary, and we are issuing these regulations as final rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in the provisions on prehearing proceedings and decisions by attorney advisors. However, without a timely extension of the expiration date for these provisions, we will lack regulatory authority beginning April 1, 1999, to have OHA attorney advisors conduct certain prehearing proceedings and issue fully favorable decisions where appropriate under the rules. In order to provide for an uninterrupted continuance of that authority for the additional period we believe appropriate, and to ensure that we retain the ability to manage the hearings process appropriately, we find that it is in the public interest to make these rules effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, the rules are not subject to OMB review.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: March 11, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J is amended as follows:

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

2. Section 404.942 is amended by revising paragraph (g), to read as follows:

§ 404.942 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(g) *Sunset provision.* The provisions of this section will no longer be effective on April 1, 2000, unless they are extended by the Commissioner of Social Security by publication of a final rule in the **Federal Register**.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N is amended as follows:

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

Authority: Sec. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); 31 U.S.C. 3720A.

2. Section 416.1442 is amended by revising paragraph (g), to read as follows:

§ 416.1442 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(g) *Sunset provision.* The provisions of this section will no longer be effective on April 1, 2000, unless they are extended by the Commissioner of Social Security by publication of a final rule in the **Federal Register**.

[FR Doc. 99–6880 Filed 3–19–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Oxytetracycline Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental abbreviated new animal drug applications (ANADA's) filed by PennField Oil Co. The ANADA's provide for a zero-day withdrawal period for use of oxytetracycline hydrochloride (OTC HCl) soluble powder in the drinking water of turkeys and for an additional package size.

EFFECTIVE DATE: March 22, 1999.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0212.

SUPPLEMENTARY INFORMATION: Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68144, filed two supplements to ANADA 200–026. One supplement provides for a zero-day withdrawal period for turkeys using PennField Oil Co.'s Oxytetracycline HCl–343 (oxytetracycline hydrochloride) treated drinking water. The other supplement provides for use of a package containing 512 grams of OTC HCl per 23.9 ounces of soluble powder for making medicated drinking water for cattle, swine, sheep, chickens, and turkeys. The medicated drinking water is used for the control and treatment of bacterial infections caused by oxytetracycline susceptible organisms.

The supplemental ANADA's are approved as of February 5, 1999, and 21 CFR 520.1660d(a)(8) and (d)(1)(ii) are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.1660d is amended in paragraphs (a)(8), (d)(1)(ii)(A)(*3*), (d)(1)(ii)(B)(*3*), and (d)(1)(ii)(C)(*3*) by adding a sentence to the end of each paragraph to read as follows:

§ 520.1660d Oxytetracycline hydrochloride soluble powder.

(a) * * *

(8) * * * Each 677.5-gram packet (23.9 ounce) contains 512 grams of OTC HCl.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(A) * * *

(*3*) * * * Zero-day withdrawal for those products sponsored by No. 053389.

(B) * * *

(*3*) * * * Zero-day withdrawal for those products sponsored by No. 053389.

(C) * * *

(*3*) * * * Zero-day withdrawal for those products sponsored by No. 053389.

* * * * *

Dated: February 26, 1999.

Margaret Ann Miller,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–6807 Filed 3–19–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

New Animal Drugs for Use in Animal Feeds; Tilmicosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health, A Division of Eli Lilly & Co. The supplemental NADA for veterinary prescription use of tilmicosin Type C medicated swine feeds under a veterinary feed directive (VFD) provides a revised limitation to prevent accidental access by horses. Also, FDA amends the regulation to provide a swine muscle tolerance and an acceptable daily intake (ADI).

EFFECTIVE DATE: March 22, 1999.

FOR FURTHER INFORMATION CONTACT: William T. Flynn, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7570.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, is sponsor of NADA 141–064 that provides for the use of Pulmotil® (tilmicosin) Type A medicated article to make Type B and Type C medicated swine feeds for control of swine respiratory disease. The drug is limited to use by or on the order of a licensed veterinarian under an approved VFD. The firm filed a supplemental NADA that provided for a revised limitation to prevent accidental access by horses. Also, FDA reviewed the information in the application and revised the regulation to provide an ADI and a swine muscle tolerance. The supplemental NADA is approved as of February 2, 1999, and the regulations in 21 CFR 556.735 and 558.618 are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 556

Animal drugs, Food.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

2. Section 556.735 is revised to read as follows:

§ 556.735 Tilmicosin.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of tilmicosin is 25 micrograms per kilogram of body weight per day.

(b) *Tolerances*—(1) *Cattle.* A tolerance is established for residues of parent tilmicosin (marker residue) in liver (target tissue) at 1.2 parts per million (ppm).

(2) *Swine.* A tolerance is established for residues of parent tilmicosin (marker residue) in liver (target tissue) at 7.5 ppm and in muscle at 0.1 ppm.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

4. Section 558.618 is amended in paragraph (d)(3) by adding a new sentence after the second sentence to read as follows:

§ 558.618 Tilmicosin

* * * * *

(d) * * *

(3) * * * Do not allow horses or other equine access to feeds containing tilmicosin. * * *

* * * * *

Dated: February 26, 1999.

Margaret Ann Miller,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–6669 Filed 3–19–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Parts 121 and 124

[Public Notice 3011]

Amendments to the International Traffic in Arms Regulations (ITAR): Control of Commercial Communications Satellites on the United States Munitions List

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the International Traffic in Arms Regulations (ITAR) by re-designating on the U.S. Munitions List (USML) commercial communications satellites.

EFFECTIVE DATE: March 15, 1999.

FOR FURTHER INFORMATION CONTACT: William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State, Telephone (703) 812–2564 or FAX (703) 875–6647 ATTN: Regulatory Change, Commercial Communications Satellites.

SUPPLEMENTARY INFORMATION: On October 17, 1998, the President signed Public Law 105–261, The Strom Thurmond National Defense Authorization Act for Fiscal Year 1999. This Act requires that, inter alia, effective March 15, 1999, communications satellites and related items (as defined in the Act) be controlled on the U.S. Munitions List, except with respect to export licenses for such satellites issued by the Department of Commerce before March 15, 1999 and export license applications

made under the Export Administration Regulations before March 15, 1999.

This coverage by the U.S. Munitions List does not extend to NASA's International Space Station, which remains subject to the Commerce Control List as set forth in 59 Fed. Regis. 47799 (1994).

Importantly, however, this rule change does provide for U.S. Munitions List coverage for all other spacecraft, including all satellites, and all spacecraft technical data, as well as all components, accessories, attachments, and related technical assistance, including, without exception, all launch support activities (e.g., technical data provided to the launch provider on form, fit, function, mass, electrical, mechanical, dynamic, environmental, telemetry, safety, facility, launch pad access, and launch parameters, as well as interfaces for mating and parameters for launch). The Office of Defense Trade Controls will be contacting U.S. persons individually who have received commodity jurisdiction determinations in the past that are affected by this rule change.

Consistent with Public Law 105–261, special export controls are detailed for the launch of U.S.-origin satellites and components from or by nationals of countries other than NATO (i.e., Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Italy, Luxembourg, The Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom and the United States) or major non-NATO allies (i.e. Australia, Egypt, Israel, Japan, Republic of Korea, New Zealand, Jordan, and Argentina). The mandatory munitions licensing requirement of Public Law 105–261 for launch failure investigations and analyses is also elaborated, though such requirement has long existed in the ITAR. The Office of Defense Trade Controls generally will require a technical assistance agreement for the launch of U.S.-origin satellites and components from or by nationals of countries other than NATO or major non-NATO allies. Similarly, the Office of Defense Trade Controls generally will not authorize use of exemptions (e.g., § 124.3 and § 125.4(b)(2)) for shipments of unclassified technical data in furtherance of a technical assistance agreement in these circumstances unless the applicant has established a computerized document control and archive system for all such technical data and made provision for remote on-line access to the system by the Departments of State and Defense.

In carrying out this directive, Part 121 of Categories XIII and XV of the U.S. Munitions List (Part 121), and Part 124 concerning agreements and other defense services are amended.

This amendment involves a foreign affairs function of the United States, and therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is also exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This amendment has been found to be a minor rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996, P.L. 104–121. It does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, Communications Satellites and Related Items, Room 200, SA–6, Washington, D.C. 2052–0602.

List of Subjects

22 CFR Part 121

Arms and Munitions, Exports.

22 CFR Part 124

Arms and Munitions, Exports, Technical assistance.

Accordingly, for the reasons set forth above, Title 22, Chapter 1, subchapter M, is amended, as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for Part 121 is revised to read as follows:

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311, 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261.

2. In section 121.1, Category XIII is amended by revising paragraph (b)(1) and by removing (b)(1)(i), and Category XV is amended by revising paragraphs (a) and (b); removing paragraph (c); redesignating paragraph (d) as paragraph (c); redesignating paragraph (b)(5) as (d) and paragraphs (f)(5) (i) through (v) as (d)(1) through (5); revising newly designated paragraph (d) introductory text; revising paragraph (e) and (f); and removing paragraph (g), to read as follows:

§ 121.1 General—The United States Munitions List.

* * * * *

Category XIII—Auxiliary Military Equipment

* * * * *

(b) * * *

(1) Military cryptographic (including key management) systems, equipment, assemblies, modules, integrated circuits, components or software with the capability of maintaining secrecy or confidentiality of information or information systems, including equipment and software for tracking, telemetry and control (TT&C) encryption and decryption.

Category XV—Space Systems and Associated Equipment

* (a) Spacecraft, including communications satellites, remote sensing satellites, scientific satellites, research satellites, navigation satellites, experimental and multi-mission satellites.

***Note to paragraph (a):** Commercial communications satellites, scientific satellites, research satellites and experimental satellites are designated as SME only when the equipment is intended for use by the armed forces of any foreign country.

(b) Ground control stations for telemetry, tracking and control of spacecraft or satellites, or employing any of the cryptographic items controlled under category XIII of this subchapter.

* * * * *

(d) Radiation-hardened microelectronic circuits that meet or exceed all five of the following characteristics:

* * * * *

(e) All specifically designed or modified systems, components, parts, accessories, attachments, and associated equipment for the articles in this category, including the articles identified in § 1516 of Public Law 105–261: satellite fuel, ground support equipment, test equipment, payload adapter or interface hardware, replacement parts, and non-embedded solid propellant orbit transfer engines (see also categories IV and V).

(f) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the articles enumerated in paragraphs (a) through (e) of this category, as well as detailed design, development, manufacturing or production data for all spacecraft and specifically designed or modified components for all spacecraft systems. This paragraph includes all technical data, without exception, for all launch support activities (e.g., technical data provided to the launch provider on form, fit, function, mass, electrical, mechanical, dynamic, environmental, telemetry, safety, facility, launch pad access, and launch parameters, as well as interfaces for mating and parameters

for launch.) (See § 124.1 for the requirements for technical assistance agreements before defense services may be furnished even when all the information relied upon by the U.S. person in performing the defense service is in the public domain or is otherwise exempt from the licensing requirements of this subchapter.) Technical data directly related to the manufacture or production of any article enumerated elsewhere in this category that is designated as Significant Military Equipment (SME) shall itself be designated SME. Further, technical data directly related to the manufacture or production of all spacecraft, notwithstanding the nature of the intended end use (e.g., even where the hardware is not SME), is designated SME.

Note to paragraph (f): The special export controls contained in § 124.15 of this subchapter are always required before a U.S. person may participate in a launch failure investigation or analysis and before the export of any article or defense service in this category for launch in, or by nationals of, a country that is not a member of the North Atlantic Treaty Organization or a major non-NATO ally of the United States. Such special export controls also may be imposed with respect to any destination as deemed appropriate in furtherance of the security and foreign policy of the United States.

PART 124—AGREEMENTS, OFF-SHORE PROCURMENT AND OTHER DEFENSE SERVICES

3. The authority citation for Part 124 is revised to read as follows:

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311, 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261.

4. Section 124.15 is revised to read as follows:

§ 124.15 Special Export Controls for Defense Articles and Defense Services Controlled under Category XV: Space Systems and Space Launches.

(a) The export of any satellite or related item (see § 121.1, Category XV(a) and (e)) or any defense service controlled by this subchapter associated with the launch in, or by nationals of, a country that is not a member of the North Atlantic Treaty Organization or a major non-NATO ally of the United States always requires special exports controls, in addition to other export controls required by this subchapter, as follows:

(1) All licenses and other requests for approval require a technology transfer control plan (TTCP) approved by the Department of Defense and an encryption technology control plan approved by the National Security Agency. Drafts reflecting advance discussions with both agencies must accompany submission of the license application or proposed technical assistance agreement, and the letter of transmittal required in § 124.12 must identify the U.S. Government officials familiar with the preparation of the draft TTCPs. The TTCP must require any U.S. person or entity involved in the export to notify the Department of Defense in advance of all meetings and interactions with any foreign person or entity that is a party to the export and require such U.S. person or entity to certify that it has complied with this notification requirement within 30 days after launch.

(2) The U.S. person must make arrangements with the Department of Defense for monitoring. The costs of such monitoring services must be fully reimbursed to the Department of Defense by the U.S. person receiving such services. The letter of transmittal required under § 124.12 must also state that such reimbursement arrangements have been made with the Department of Defense and identify the specific Department of Defense official with whom these arrangements have been made. As required by Public Law 105–261, such monitoring will cover, but not be limited to—

(i) Technical discussions and activities, including the design, development, operation, maintenance, modification, and repair of satellites, satellite components, missiles, other equipment, launch facilities, and launch vehicles;

(ii) Satellite processing and launch activities, including launch preparation, satellite transportation, integration of the satellite with the launch vehicle, testing and checkout prior to launch, satellite launch, and return of equipment to the United States;

(iii) Activities relating to launch failure, delay, or cancellation, including post-launch failure investigations or analyses with regard to either the launcher or the satellite; and

(iv) All other aspects of the launch.

(b) Mandatory licenses for launch failure (crash) investigations or analyses: In the event of a failure of a launch from a foreign country (including a post liftoff failure to reach proper orbit)—

(1) The activities of U.S. persons or entities in connection with any subsequent investigation or analysis of the failure continue to be subject to the controls established under section 38 of the Arms Export Control Act, including the requirements under this subchapter for express approval prior to participation in such investigations or analyses, regardless of whether a license was issued under this subchapter for the initial export of the satellite or satellite component;

(2) Officials of the Department of Defense must monitor all activities associated with the investigation or analyses to insure against unauthorized transfer of technical data or services and U.S. persons must follow the procedures set forth in paragraphs (a)(1) and (a)(2) of this Category.

(c) Although Public Law 105–261 does not require the application of special export controls for the launch of U.S.-origin satellites and components from or by nationals of countries that are members of NATO or major non-NATO allies, such export controls may nonetheless be applied, in addition to any other export controls required under this subchapter, as appropriate in furtherance of the security and foreign policy of the United States. Further, the export of any article or defense service controlled under this subchapter to any destination may also require that the special export controls identified in paragraphs (a)(1) and (a)(2) of this category be applied in furtherance of the security and foreign policy of the United States.

(d) Mandatory licenses for exports to insurance providers and underwriters: None of the exemptions or sub-licensing provisions available in this subchapter may be used for the export of technical data in order to obtain or satisfy insurance requirements. Such exports are always subject to the prior approval and re-transfer requirements of sections 3 and 38 of the Arms Export Control Act, as applied by relevant provisions of this subchapter.

Dated: March 11, 1999.

John D. Holum,

Acting Under Secretary of State for Arms Control and International Security Affairs and Director, U.S. Arms Control and Disarmament Agency, Department of State.

[FR Doc. 99–6797 Filed 3–19–99; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 24

[T.D. ATF–409]

RIN 1512–AB87

Delegation of Authority

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: Authority delegation. This final rule places most ATF authorities contained in part 24, title 27 Code of Federal Regulations (CFR), with the ''appropriate ATF officer'' and requires that persons file documents required by part 24, title 27 Code of Federal Regulations (CFR), with the ''appropriate ATF officer'' or in accordance with the instructions on the ATF form. Also, this final rule removes the definitions of, and references to, specific officers subordinate to the Director. Concurrently with this Treasury Decision, ATF Order 1130.5 is being published. Through this order, the Director has delegated most of the authorities in 27 CFR part 24 to the appropriate ATF officers and specified the ATF officers with whom applications, notices and other reports, which are not ATF forms, are filed.

EFFECTIVE DATE: March 22, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Revenue Operations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (202–927–8220).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Treasury Order 120–01 (formerly 221), dated June 6, 1972, the Secretary of the Treasury delegated to the Director of the Bureau of Alcohol, Tobacco and Firearms (ATF), the authority to enforce, among other laws, the provisions of chapter 51 of the Internal Revenue Code of 1986 (IRC). The Director has subsequently redelegated certain of these authorities to appropriate subordinate officers by way of various means, including by regulation, ATF delegation orders, regional directives, or similar delegation documents. As a result, to ascertain what particular officer is authorized to perform a particular function under chapter 51, each of these various delegation instruments must be consulted. Similarly, each time a delegation of authority is revoked or redelegated, each of the delegation documents must be reviewed and amended as necessary.

ATF has determined that this multiplicity of delegation instruments complicates and hinders the task of determining which ATF officer is authorized to perform a particular function. ATF also believes these multiple delegation instruments exacerbate the administrative burden associated with maintaining up-to-date delegations, resulting in an undue delay in reflecting current authorities.

Accordingly, this final rule rescinds all authorities of the Director in part 24 that were previously delegated and places those authorities with the ''appropriate ATF officer.'' Most of the authorities of the Director that were not previously delegated are also placed with the ''appropriate ATF officer.'' Along with this final rule, ATF is publishing ATF Order 1130.5, Delegation Order—Delegation of the Director's Authorities in part 24, Wine, which delegates certain of these authorities to the appropriate organizational level. The effect of these changes is to consolidate all delegations of authority in part 24 into one delegation instrument. This action both simplifies the process for determining what ATF officer is authorized to perform a particular function and facilitates the updating of delegations in the future. As a result, delegations of authority will be reflected in a more timely and user-friendly manner.

In addition, this final rule also eliminates all references in the regulations that identify the ATF officer with whom an ATF form is filed. This is because ATF forms will indicate the officer with whom they must be filed. Similarly, this final rule also amends part 24 to provide that the submission of documents other than ATF forms (such as letterhead applications, notices and reports) must be filed with the ''appropriate ATF officer'' identified in ATF Order 1130.5. These changes will facilitate the identification of the officer with whom forms and other required submissions are filed.

This final rule also makes various technical amendments to Subpart C—Administrative and Miscellaneous Provisions of 27 CFR part 24. Specifically, a new § 24.19 is added to recognize the authority of the Director to delegate regulatory authorities in part 24 and to identify ATF Order 1130.5 as the instrument reflecting such delegations. Also, § 24.20 is amended to provide that the instructions for an ATF form identify the ATF officer with whom it must be filed.

ATF intends to make similar changes in delegations to all other parts of Title 27 of the Code of Federal Regulations through separate rulemakings. By amending the regulations part by part, rather than in one large rulemaking document and ATF Order, ATF minimizes the time expended in notifying interested parties of current delegations of authority.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. A copy of this final rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action because it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Administrative Procedure Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Robert Ruhf, Regulations Division,

Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

Authority and Issuance

Title 27, Code of Federal Regulations is amended as follows:

PART 24—WINE

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

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 24.3 [Removed]

Par. 2. Section 24.3 is removed.

Par. 3. Section 24.10 is amended by removing the definitions of ''Area supervisor'', ''ATF Officer'', ''Region'', and ''Regional director (compliance)'' and by adding a new definition of ''Appropriate ATF officer'' to read as follows:

§ 24.10 Meaning of terms.

* * * * *

Appropriate ATF Officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.5, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 24—Wine.

* * * * *

Par. 4. In Subpart C—Administrative and Miscellaneous Provisions, the undesignated center heading of ''Authorities of the Director'' is amended by removing the words ''of the Director''.

Par. 5. A new § 24.19 is added in Subpart C after the undesignated center heading of ''Authorities'', to read as follows:

§ 24.19 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this Part 24 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.5, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 24—Wine. ATF delegation orders, such as ATF Order 1130.5, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

§ § 24.20, 24.21, 24.22, 24.87, 24.127, 24.245, 24.246, 24.247, 24.248, 24.249, and 24.250 [Amended]

Par. 6. In part 24 remove the words ''Director'' each place it appears and add, in substitution, the words ''appropriate ATF officer'' in the following places:

(a) Section 24.20(a);
(b) Section 24.21(a) introductory text, and (c);
(c) Section 24.22(a) introductory text, and (b);
(d) Section 24.87;
(e) Section 24.127;
(f) Section 24.245;
(g) Section 24.246(a)(1);
(h) Section 24.247;
(i) Section 24.248;
(j) Section 24.249(a); and (k) Section 24.250(b)(9).

Par. 7. Section 24.20 is amended by adding a sentence at the end of paragraph (a) and revising paragraph (b) to read as follows:

§ 24.20 Forms prescribed.

(a) * * * The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

* * * * *

§ § 24.21, 24.26, 24.27, 24.28, 24.29, 24.30, 24.31, 24.32, 24.52, 24.60, 24.62, 24.65, 24.66, 24.69, 24.70, 24.77, 24.91, 24.96, 24.105, 24.107, 24.108, 24.110, 24.111, 24.115, 24.116, 24.120, 24.123, 24.124, 24.125, 24.135, 24.137, 24.140, 24.141, 24.150, 25.154, 25.155, 24.157, 24.159, 24.165, 24.166, 24.167, 24.169, 24.170, 24.183, 24.191, 24.231, 24.236, 24.242, 24.249, 24.260, 24.265, 24.272, 24.273, 24.276, 24.278, 24.279, 24.296, 24.300 and 24.313 [Amended]

Par. 8. Part 24 is further amended by removing the words ''regional director (compliance)'' each place it appears and adding, in substitution, the words ''appropriate ATF officer'' in the following places:

(a) Section 24.21(b);
(b) Section 24.26;
(c) Section 24.27;
(d) Section 24.28;
(e) Section 24.29;
(f) Section 24.30;
(g) Section 24.31;
(h) Section 24.32;
(i) Section 24.52(a);
(j) Section 24.60;
(k) Section 24.62;
(l) Section 24.65(a) introductory text, (b) introductory text, and (c) introductory text;
(m) Section 24.66(a);
(n) Section 24.69(b);
(o) Section 24.70;
(p) Section 24.77(c), (d) and (e);
(q) Section 24.91(c);
(r) Section 24.96(a);
(s) Section 24.105;
(t) Section 24.107;
(u) Section 24.108;
(v) Section 24.110(c)(1);
(w) Section 24.111;
(x) Section 24.115;
(y) Section 24.116;
(z) Section 24.120;
(aa) Section 24.123;
(bb) Section 24.124;
(cc) Section 24.125(c);
(dd) Section 24.135(b)(4), (c), (d) and (e);
(ee) Section 24.137(a), (b)(3) and (c);
(ff) Section 24.140(a) and (b)(3);
(gg) Section 24.141;
(hh) Section 24.150;
(ii) Section 24.154;
(jj) Section 24.155 (a), introductory text and (b);
(kk) Section 24.157;
(ll) Section 24.159;
(mm) Section 24.165;
(nn) Section 24.166;
(oo) Section 24.167(a);
(pp) Section 24.169;
(qq) Section 24.170(a) and (b);
(rr) Section 24.183;
(ss) Section 24.191;
(tt) Section 24.231;
(uu) Section 24.236;
(vv) Section 24.242 (a), introductory text, (b), (c)(1), introductory text, and (c)(2);
(ww) Section 24.249(c);
(xx) Section 24.260;
(yy) Section 24.265;
(zz) Section 24.272(b)(3) and (e);
(aaa) Section 24.273(b);
(bbb) Section 24.276;
(ccc) Section 24.278(h);
(ddd) Section 24.279(a);
(eee) Section 24.296(a) and (b);
(fff) Section 24.300(d); and
(ggg) Section 24.313, introductory text.

Par. 9. In Subpart C-Administrative and Miscellaneous Provisions, the undesignated center headings of ''Authorities of the Regional Director (Compliance)'' and ''Authorities of ATF Officers'' are removed.

§ 24.22 [Amended]

Par. 10. Paragraph (b) of § 24.22 is amended by removing the words ''the regional director (compliance) for transmittal to''.

Par. 11. Paragraph (c) of § 24.22 is amended by removing the phrase ''the regional director (compliance), or the Director'' and adding, in substitution, the phrase ''appropriate ATF officer''.

§§ 24.36, 24.230 and 24.235 [Amended]

Par. 12. Section 24.36, § 24.230, and paragraph (b) of § 24.235 are amended by removing the words ''area supervisor'' and adding, in substitution, the words ''appropriate ATF officer''.

Par. 13. Section 24.25 is revised to read as follows:

§ 24.25 Emergency variations from requirements.

(a) *General.* The appropriate ATF officer may approve construction, equipment, and methods of operation other than as specified in this part, when in the judgment of such officer an emergency exists, the proposed variations from the specified requirements are necessary, and the proposed variations:

(1) Will afford the security and protection to the revenue intended by the prescribed specifications;

(2) Will not hinder the effective administration of this part; and

(3) Will not be contrary to any provisions of law.

(b) *Application.* The proprietor must submit a written application to the appropriate ATF officer within 24 hours of any temporary approval granted under paragraph (c) of this section, which describes the proposed variation, and sets forth the reasons therefor.

(c) *Temporary Approval.* The proprietor who desires to employ an emergency variation from requirements must contact the appropriate ATF officer and request temporary approval until the written application, required by paragraph (b) of this section, is acted upon. The appropriate ATF officer will be a subordinate of the ATF officer designated in paragraph (a) of this section. Where the emergency threatens life or property, the proprietor may take immediate action to correct the situation without prior notification; however, the proprietor must promptly contact the appropriate ATF officer and file with that officer a report concerning the emergency and the action taken to correct the situation.

(d) *Conditions.* The proprietor must, during the period of variation from requirements granted under this section, comply with the terms of the approved application. A failure to comply in good faith with any procedures, conditions, and limitations will automatically terminate the authority for a variation. Upon termination of the variation, the proprietor must fully comply with requirements of regulations for which the variation was authorized. Authority for any variation may be withdrawn whenever in the judgment of the appropriate ATF officer the revenue is jeopardized or the effective administration of this part is hindered by the continuation of the variation.

§§ 24.30, 24.35, 24.37, 24.40, 24.54, 24.77, 24.91, 24.117, 24.259, 24.291, 24.293, 24.300 and 24.304 [Amended]

Par. 14. Part 24 is further amended by adding the word ''appropriate'' before the words ''ATF officer'' each place it appears in the following places:

(a) Section 24.30;
(b) Section 24.35;
(c) Section 24.37;
(d) Section 24.40;
(e) Section 24.54(c);
(f) Section 24.77(d);
(g) Section 24.91, introductory text;
(h) Section 24.117;
(i) Section 24.259(c);
(j) Section 24.291(c);
(k) Section 24.293(b);
(l) Section 24.300(b) and (e)(3); and
(m) Section 24.304(a).

§ 24.31 [Amended]

Par. 15. Section 24.31 is amended by removing the phrase ''a designated'', and in substitution, adding the phrase ''an appropriate''.

Par. 16. Section 24.41 is revised to read as follows:

§ 24.41 Office facilities.

The appropriate ATF officer may require the proprietor to furnish temporarily a suitable work area, desk and equipment necessary for the use of appropriate ATF officers in performing Government duties whether or not such office space is located at the specific premises where regulated operations occur or at corporate business offices where no regulated activity occurs. Such office facilities will be subject to approval by the appropriate ATF officer.

§ 24.52 [Amended]

Par. 16. The second sentence of paragraph (b) of § 24.52 is amended by removing the words ''regional director (compliance) of the region in which the bonded wine premises or taxpaid wine bottling house is located'' and adding, in substitution, the phrase ''appropriate ATF officer''.

Par. 17. The first, fifth and sixth sentences of paragraph (b) of § 24.77 are revised to read as follows:

§ 24.77 Experimental wine.

* * * * *

(b) *Qualification.* An institution that wants to conduct experimental wine operations must apply in letter form to the appropriate ATF officer. * * * The applicant must, when required by the appropriate ATF officer, furnish as part of the application, additional information that may be necessary to determine whether the application should be approved. Operations may not begin until authorized by the appropriate ATF officer.

* * * * *

Par. 19. The second and last sentences of § 24.80 are revised to read as follows:

§ 24.80 General.

* * * The formula must be prepared and filed on ATF F 5120.29, Formula and Process for Wine, in accordance with the instructions on the form.* * * Except for research, development, and testing, no special natural wine, agricultural wine, or, if required to be covered by an approved formula, wine other than standard wine may be produced prior to approval by the appropriate ATF officer of a formula covering each ingredient and process (if the process requires approval) used in the production of the product.

* * * * *

Par. 20. The third and sixth sentences of § 24.81 are revised as follows:

§ 24.81 Filing of formulas.

* * * After a change in formula is approved, the original formula must be surrendered to the appropriate ATF officer. * * * The appropriate ATF officer may at any time require the proprietor to file a statement of process in addition to that required by the ATF F 5120.29 or any other data to determine whether the formula should be approved or the approval continued.

* * * * *

§ 24.82 [Amended]

Par. 21. The fourth sentence of § 24.82 is amended by removing the words ''Director or the regional director (compliance)'' and adding, in substitution, the words ''appropriate ATF officer''.

§ 24.100 [Amended]

Par. 22. Section 24.100 and the introductory text of paragraph (g) of § 24.300 are amended to remove the phrase ''to the regional director (compliance)''.

§ 24.101 [Amended]

Par. 23. The first and second sentences of paragraph (a) of § 24.101

are amended to remove the phrase ''with the regional director (compliance)'' and in the first sentence only add, in substitution, the phrase ''as provided in § 24.105''.

Par. 24. Section 24.103 is revised to read as follows:

§ 24.103 Other operations.

Upon the specific approval of the appropriate ATF officer, other operations not provided for in this part may be conducted on wine premises. Authority to conduct other operations may be obtained by submitting an application to the appropriate ATF officer. The application must specifically describe the operation to be conducted and the wine premises and equipment to be used. An appropriate ATF officer may make any inquiry necessary to determine whether the conduct of other operations on wine premises would jeopardize the revenue, conflict with wine operations, or be contrary to law. Other operations authorized under this section will be conducted in accordance with the conditions, limitations, procedures, and terms stated in the approved application. Authority to conduct other operations may be withdrawn whenever the appropriate ATF officer determines the conduct of the other operations on wine premises jeopardizes the revenue, conflicts with wine operations, or is contrary to law.

§ § 24.106, 24.114, 24.135, and 24.137 [Amended]

Par. 25. The fourth sentence of § 24.106, the second and third sentences of § 24.114, the introductory text of paragraph (b) of § 24.135 and paragraph (b) of § 24.137 are amended to remove the phrase ''with the regional director (compliance)''.

§ 24.109 [Amended]

Par. 26. The second sentence of paragraph (k) of § 24.109 is amended by removing the words ''regional director (compliance) of any ATF region'' and adding, in substitution, the phrase ''appropriate ATF officer'' and the fourth and fifth sentences are amended by removing the words ''regional director (compliance)'' and by adding, in substitution, the phrase ''appropriate ATF officer''.

Par. 27. Paragraph (d) of § 24.110 is revised to read as follows:

§ 24.110 Organizational Documents.

* * * * *

(d) *Availability of additional corporate documents.* The originals of documents required to be submitted under this section and additional documents that may be required by the appropriate ATF officer (such as articles of incorporation, bylaws, and any certificate issued by a State authorizing operations) must be made available to any appropriate ATF officer upon request.

* * * * *

§ 24.116 [Amended]

Par. 28. The last sentence of § 24.116 is amended to remove the words ''regional director'' and adding, in substitution, the phrase ''appropriate ATF officer''.

§ 24.131 [Amended]

Par. 29. Section 24.131 is amended to remove the words ''regional director (compliance) through the area supervisor'' from the first sentence and the words ''regional director (compliance)'' from the third sentence and adding in both sentences, in substitution, the phrase ''appropriate ATF officer''.

Par. 30. The first and second sentences of § 24.145 are revised to read as follows:

§ 24.145 General requirements.

Each person required to file a bond or consent of surety under this part must prepare, execute and submit the bond or consent of surety on the prescribed form in accordance with this part and the instructions printed on the form. A person may not commence or continue any business or operation relating to wine until all bonds and consents of surety required under this part with respect to the business or operation have been approved by the appropriate ATF officer.* * *

§24.201 [Amended]

Par. 31. The first sentence of § 24.201 is amended by removing the phrase ''from the Director'' and adding, in substitution, the word ''an''.

§ 24.211 [Amended]

Par. 32. The second sentence of § 24.211 is amended by removing the words ''with the Director''.

Par. 33. Paragraph (b) of § 24.249 is revised to read as follows:

§ 24.249 Experimentation with new treating material or process.

* * * * *

(b) *Application.* The proprietor who wants to conduct experimentation must file an application with the appropriate ATF officer setting forth in detail the experimentation to be conducted and the facilities and equipment to be used. The proposed experimentation must not be conducted until the appropriate ATF officer has determined that the conduct of such experimentation must not jeopardize the revenue, conflict with wine operations, or be contrary to law, and has approved the application.

* * * * *

§ 24.250 [Amended]

Par. 34. Paragraph (a) of § 24.250 is amended by removing the following phrase ''regional director (compliance) of the region in which the bonded wine premises is located'' and adding, in substitution, the phrase ''appropriate ATF officer''.

§ 24.250 [Amended]

Par. 35. Paragraph (c) of § 24.250 is revised by removing the word ''Director'' in the first sentence and, in substitution, adding the phrase ''appropriate ATF officer'', and removing the last two sentences.

Par. 36. Paragraph (d) of § 24.250 is revised to read as follows:

§ 24.250 Application for use of new treating material or process.

* * * * *

(d) *Processing of application.* After evaluation of the data submitted with the application, the appropriate ATF officer will make a decision regarding the acceptability of the proposed treatment in good commercial practice. The appropriate ATF officer will notify the proprietor of the approval or disapproval of the application.

* * * * *

§24.267 [Amended]

Par. 37. Section 24.267 is amended by removing the words ''regional director (compliance) or nearest designated'' and adding, in substitution, the word ''appropriate''.

Par. 38. The text of 24.268 is revised to read as follows:

§ 24.268 Losses by fire or other casualty.

The proprietor must immediately report any loss by theft, fire or other casualty, or any other extraordinary or unusual loss to the appropriate ATF officer. If required by the appropriate ATF officer, the proprietor must file a claim under the provisions of § 24.65. The volume of wine loss must be reported on ATF F 5120.17 for the reporting period during which the loss occurred.

* * * * *

§ 24.272 [Amended]

Par. 39. Paragraph (b)(1) of § 24.272 is amended by removing the words ''regional director (compliance) of each ATF region in which taxes are paid'' and adding, in substitution, the words ''appropriate ATF officer''.

Par. 40. Paragraph (a) of § 24.294 is revised to read as follows:

§ 24.294 Destruction of Wine.

(a) *General.* Wine on bonded wine premises may be destroyed on or off wine premises by the proprietor without payment of tax. A proprietor who wants to destroy wine on or off wine premises must file with the appropriate ATF officer an application stating the kind, alcohol content, and approximate volume of wine to be destroyed, where the wine is to be destroyed, and the reason for destruction. Wine to be destroyed must be inspected, and the destruction supervised, by an appropriate ATF officer unless the appropriate ATF officer authorizes the proprietor to destroy the wine without inspection and supervision. The wine must not be destroyed until the proprietor has received authority from the appropriate ATF officer.

Par. 41. The third sentence of paragraph (a) introductory text, of § 24.300 is amended by removing the phrase ''submitted to the regional director (compliance)''.

Par. 42. § 24.300, paragraph (c) and the third and fifth sentences of paragraph (g)(2) are revised to read as follows:

§ 24.300 General.

* * * * *

(c) *Prescribed forms.* All reports required by this part must be submitted on forms prescribed by § 24.20. Entries will be made as indicated by the headings of the columns and lines, and as required by the instructions for the form. Report forms are furnished free of cost.

* * * * *

(g) *ATF F 5120.17, Report of bonded wine premises operations.* * * *

(2) * * * A proprietor who is commencing operations during a calendar year and expects to meet these criteria may use a letter notice to the appropriate ATF officer, and file an annual ATF F 5120.17 for the remaining portion of the calendar year. * * * If there is a jeopardy to the revenue, the appropriate ATF officer may at any time require any proprietor otherwise eligible for annual filing of a report of bonded wine premises operations to file such report monthly.

* * * * *

Signed: December 9, 1998.

John W. Magaw,

Director.

Approved: February 9, 1999.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–6736 Filed 3–19–99; 8:45 am]

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DEPARTMENT OF JUSTICE

28 CFR Part 79

[A.G. Order No. 2213–99]

RIN 1105–AA49

Radiation Exposure Compensation Act: Evidentiary Requirements; Definitions; and Number of Times Claims May Be Filed

AGENCY: Civil Division, Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (''the Department'') amends its existing regulations implementing the Radiation Exposure Compensation Act to: allow claimants to submit affidavits or declarations in support of a claim to establish smoking and alcohol consumption histories where no other records exist; allow the use of pathology reports of tissue biopsies as additional means by which claimants can present evidence of a compensable non-malignant respiratory disease; amend the definitions of ''smoker'' and ''non-smoker''; include *in situ* lung cancers under the definition of primary cancers of the lung; and allow claimants who have filed claims prior to the implementation of these regulations and have been denied compensation to file another three times.

DATES: Effective date: April 21, 1999. This final rule will apply to all claims pending with the Radiation Exposure Compensation Act Program (''RECA Program'') as of this date.

FOR FURTHER INFORMATION CONTACT: Gerard W. Fischer (Assistant Director), (202) 616–4090, and Lori Beg (Attorney), (202) 616–4377, U.S. Department of Justice, Civil Division, P.O. Box 146, Ben Franklin Station, Washington, D.C. 20044–0146.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 1997, the Attorney General published a notice of proposed rulemaking in the **Federal Register**, 62 FR 28393 (1997), setting forth proposed amendments to the regulations implementing the Radiation Exposure Compensation Act, Pub. L. 101–426, 104 Stat. 920 (1990) (codified as amended at 42 U.S.C. 2210 note) (''RECA'' or ''Act''). Comments were received over a period of 30 days ending on July 22, 1997. In response to several requests from the public for additional time, the comment period was reopened on August 29, 1997, for an additional 30-day period ending on September 29, 1997. The Department of Justice received 31 letters, each containing one or more comments regarding the proposed amendments. Commenters included both interested individuals and organizations. Most of the comments were positive, applauding the proposed changes and encouraging their swift implementation.

The Department carefully reviewed all of the comments, several of which resulted in changes to the proposed rule. Specifically, the final rule will not introduce standards for the use of high resolution computed tomography (''HRCT'') reports, which were included in § 79.36(a)(ii)(A)(2) of the proposed rule. The Department received many substantive comments on the proposed use of HRCT reports as a means by which claimants can present evidence of a compensable non-malignant respiratory disease. In order to respond to those comments, the Department engaged in extensive research and consultation. Presently, there is no consensus in the medical community for standardized criteria for the use of HRCT reports in the diagnosis of non-malignant respiratory diseases. Accordingly, as soon as the Department, in consultation with its designated medical and scientific experts, is able to identify recognized standards for the use of HRCT reports, the Department will implement appropriate regulations.

Furthermore, the final rule amends the definitions of ''heavy smoker'' and ''smoker'' to exclude, and the definition of ''non-smoker'' to include, claimants who stopped smoking at least fifteen years prior to the date of diagnosis of disease. These definitions apply to claimants diagnosed with a compensable non-malignant respiratory disease as well as those diagnosed with lung cancer, as originally proposed. The Department is convinced that the evidence supports this approach.

Discussion of Changes and Comments

Following are summaries and discussions of the comments, which have been grouped together according to their similarity. Minor or technical issues are not discussed.

In some cases, commenters suggested that the Department incorporate certain regulatory provisions that would modify statutory requirements relating to the criteria for compensation. Section 5 of the RECA authorizes claims only by individuals employed in uranium mines in particular states. Accordingly, the implementing regulations limit compensation to individuals employed in uranium mines in those states and exclude those individuals employed in uranium mines elsewhere as well as those individuals employed in uranium

milling or processing, involved in mining other types of ore, and simply residing in a community where uranium mining was conducted. *See* 28 CFR 79.30–32. In addition, section 5 of the RECA sets forth specified compensable diseases and ties compensation to the level of radiation exposure, age at incidence of disease onset, and smoker status. The implementing regulations reflect the statutory limitations. *See* 28 CFR 79.32(c)(1)–(2). Stated simply, the Department cannot modify a statute by regulation. Rather, the legislative process must react to these concerns.

One commenter suggested that the Department hold public meetings to discuss the proposed regulatory changes, which the Assistant Director for the Radiation Exposure Compensation Program, Gerard W. Fischer, and others from the Department have done. The Program held meetings in several locations in New Mexico and Utah, including the Navajo Reservation, in order to present the proposed regulatory changes and discuss their implementation with individuals in the affected communities.

Several commenters asked the Department to render an opinion on whether certain records or references in records would satisfy the eligibility criteria in a hypothetical or individual case. The Department, however, is unable to render any opinion without reviewing an actual claim and evaluating the documentation provided in support of that claim.

Subpart A—General

Section 79.2 General Definitions

Section 79.2(e) Contemporaneous Record. One commenter requested clarification of the term ''contemporaneous records.'' Existing regulations define the term to include those records that were created when the described events occurred. In some instances, the dates of records may not coincide precisely with the dates when actions took place. For example, a claimant's employment summary contained in a mining company archive may be used to clarify periods of employment prior to the date of the summary. In such instances, we will determine whether the records were created within a sufficient time of the relevant period to be considered contemporaneous. The Department relies on contemporaneous records because of their inherent reliability and trustworthiness.

Section 79.4 Burden of proof, production of documents, presumptions, and affidavits

Section 79.4(a) Production of documents. Several commenters suggested that contemporaneous records do not exist to establish complete employment histories for underground uranium miners, particularly for those miners who worked in small mining operations. This issue was addressed in connection with the original regulations, and that discussion still applies. *See* 57 FR 12430 (1992). That is, we have seen no evidence to support the assertion that contemporaneous records do not exist. Our experience reveals that available social security records are accurate and comprehensive. Thus, where records from employers are not available from company archives, social security records will sufficiently document an individual's employment history. In the very few cases where claimants worked for companies that failed to report earnings, claimants can provide federal or state income tax records. Moreover, numerous sources, such as the National Institute for Occupational Safety and Health (''NIOSH''), the University of New Mexico School of Medicine, the Colorado Bureau of Mines, and numerous mining companies have contemporaneous records to establish individual mining histories. In cases where claimants independently operated small mines and failed to earn a sufficient income to report to federal or state agencies, Atomic Energy Commission shipping records will reflect the name of the mine operators, which may often be used to establish exposure.

One commenter noted that various contemporaneous records, including mine operator records and old medical records from country doctors, have been stored in remote areas and that the Department should collect and maintain such records. The Department currently maintains extensive records from various mining resources, including the Public Health Service Study of Uranium Miners, NIOSH, the Atomic Energy Commission, the Colorado Bureau of Mines, and Utah Mine Inspection Reports. The Department also has access to records from St. Mary's Hospital, the University of New Mexico School of Medicine, and the Colorado Tumor Registry, all of which maintain radon exposure information. The Department also has accessed records from various private entities. Although it cannot collect and store records from private companies, the Department will do all that it can to urge still-existing private companies to make their records available to the public. The Department attempts to identify records held by various public and private organizations and makes such information known to claimants. Additionally, if it is known to the Department that specific records are likely to be destroyed, we attempt to locate organizations that may be interested in maintaining those records and making them available to claimants. However, the RECA Program was not designed, nor is it equipped, to gather and maintain large quantities of records.

Section 79.4(c) Affidavits. One commenter inquired as to the form an affidavit must take and the level of specificity required. Because the information contained in an affidavit will depend on the specific facts of each case, it is impossible to precisely define the amount of detail necessary to establish any element of compensation.

Other commenters suggested that affidavits should be accepted on any and all relevant issues, and one commenter added that affidavits should be accepted to establish eligibility criteria without records to support the assertions contained therein. The Department, however, has purposefully limited the use of affidavits. In the experience of the RECA Program to date, affidavits are unnecessary in most cases. Determinations of eligibility based on documentation increase the integrity of the process, limit transactional costs, and minimize the potential for fraud. Despite complaints to the contrary, we have found that there is an enormous body of reliable contemporaneous records that can be used to establish eligibility requirements. Contemporaneous records are inherently more reliable than affidavits.

Several commenters suggested that the Department should accept affidavits from individuals other than claimants, i.e., co-workers, friends, neighbors, and extended family members, to establish eligibility criteria for downwind presence or uranium mining employment. One commenter recommended that ''non-claimant'' affidavits should be allowed to establish all eligibility criteria. The Department, however, must limit the submission of affidavits to those individuals who are best situated to supply the information. Because of the risk that such affidavits may not provide information that is based on personal knowledge, the Department has placed reasonable restrictions on the submission of affidavits in an effort to ensure their reliability. Accordingly, affidavits may be submitted only by the claimant or the eligible surviving beneficiary.

The final rule provides that affidavits will be accepted for the following purposes: (1) to prove eligibility of family members as set forth in the regulations at § 79.51(e), (f), (g), (h), or (i); (2) to acknowledge other compensation received as set forth in § 79.55(c) or (d); (3) to prove smoking and/or drinking history and/or age at diagnosis as set forth in § 79.27(d) and § 79.37(d); (4) to prove the amount of coffee consumed as set forth in § 79.27(e); or (5) to establish mining information as set forth in § 79.33(b)(2).

One commenter proposed that affidavits be permitted to establish an individual's physical presence in a designated affected downwind area where former employers are no longer in existence or records have been destroyed, and where such employment is not documented in Social Security earnings records. The commenter urged that such declarations would be admissible in a court of law. Our experience has shown that a multitude of records are available to establish presence in downwind areas. The absence of records from one particular source will not necessarily preclude a claimant from establishing such presence. The RECA Program accepts records created by government entities, educational institutions, utility services, libraries, historical societies, religious organizations, businesses, associations, and medical institutions to establish the physical presence criteria under 28 CFR 79.13. Additionally, in response to related comments to the initial regulations, the Department added contemporaneous postcards and certain postal stamped envelopes to the expansive list of acceptable records. See 57 FR 12430 (1992). Affidavits submitted in lieu of contemporaneous records, on the other hand, do not contain the same level of trustworthiness and cannot be relied upon to prove physical presence, a basic criterion for compensation under the downwinder program. The RECA Program represents Congress's attempt to create an inexpensive, expeditious, easy-to-administer, and non-adversarial scheme to compensate qualifying claimants. Expanding the role of affidavits in the compensation process would necessarily require staffing increases, alter the nature of the Program, and frustrate the purposes that Congress sought to achieve.

Subpart B—Eligibility Criteria for Claims Relating to Childhood Leukemia

Section 79.12 Criteria for Eligibility

One commenter suggested that the downwinder provisions of the regulations be amended to provide compensation for individuals who were ''in utero'' during the designated time periods and later developed leukemia. The Act as well as the current regulations are silent on the issue of whether a fetus constitutes an ''individual'' for purposes of eligibility. Accordingly, the Department will rely on judicial interpretation in addition to legislative intent in making its determination should it be faced with such a situation.

Subpart C—Eligibility Criteria for Claims Relating to Certain Specified Diseases

Section 79.22 Criteria for Eligibility

One commenter suggested that the downwinder provisions of the regulations be amended to provide compensation for individuals who were ''in utero'' during the designated time periods and later contracted any of the specified compensable diseases. The discussion of this comment at § 79.12 applies to this section of the regulations.

Subpart D—Uranium Miners

Section 79.31 Definitions

Section 79.31(e) Non-smoker. One commenter suggested that the Department revise the definition of non-smoker to include Native American Indians who smoked only for ceremonial purposes, even if they did so within 15 years of diagnosis of lung cancer. The Department evaluates each case independently in order to determine whether an individual has shown by a preponderance of the evidence that the eligibility criteria are established. In cases where an individual presents documentation referencing his or her prior smoking history, the Department will carefully evaluate such references on a case-by-case basis. In addition, most medical histories that describe smoking status reference the extent of smoking in relation to ''pack'' of cigarettes and ''portions'' used. Finally, the only type of smoking that is relevant under the regulations is cigarette smoking. Pipe smoking, or any other type of smoking, is not relevant to the RECA Program. The existing regulations specify that ''smoking'' ''does not include the use of cigars or pipe tobacco, or any tobacco products that are used without being lighted.'' 28 CFR 79.21(d).

Several commenters proposed revising the definition of non-smoker to include former smokers who developed a compensable non-malignant respiratory disease. The Department's designated experts at NIOSH have advised that former smokers who develop one of the compensable non-malignant respiratory diseases could be considered non-smokers for purposes of establishing the eligibility criteria. The NIOSH experts advise that this is especially true if the individual stopped smoking many years prior to the diagnosis of a restrictive non-malignant respiratory disease. Further, it is the opinion of the NIOSH experts that, based on available existing medical data, it is reasonable to treat an individual diagnosed with a compensable non-malignant respiratory disease as a non-smoker where the individual stopped smoking at least 15 years prior to diagnosis. We have decided to accept the recommendation of commenters to extend the applicability of the definition of ''non-smoker'' to individuals who stopped smoking at least 15 years prior to being diagnosed with a compensable non-malignant respiratory disease.

Section 79.31 (f) Smoker. The Department currently defines a smoker as an individual who smoked at least ''one (1) pack year'' of cigarette products. Several commenters suggested that the Department should increase the number of pack years required for an individual to be treated as a smoker. Existing regulations define a pack year as ''an average of 20 cigarettes per day for one year.'' 28 CFR 79.21(d). A more detailed discussion of this definition was offered in connection with Department's current implementing regulations. See 57 FR 12431 (1992). However, in light of the suggested change, we reviewed the relevant literature and consulted with numerous experts from the National Cancer Institute. We were advised that most epidemiological studies define a ''smoker'' as one who smoked one cigarette per day for one year, far less than the one pack year of cigarette smoking presently used in the RECA Program and set forth in the regulations. Many of the experts we consulted consider our current working definition very lenient and recommend against liberalizing it further.

Section 79.31 (g) Onset or Incidence. One commentator noted that the ''date of diagnosis'' or ''initial diagnosis'' is not always clear from the medical records. With respect to uranium miners, the date of diagnosis is relevant only in relation to the issue of smoking status. A claimant's smoking status must be established by providing all medical records, as specified in 28 CFR 79.37(a), that were created six months prior to, and six months after, the initial date of diagnosis of a compensable disease. When the date of diagnosis is relevant, the RECA Program reviews the medical

records to establish the initial date of diagnosis of a compensable disease. If any records suggest an earlier date of diagnosis, we will request medical records from the time of the earlier date of diagnosis to resolve the question. In all cases, the RECA Program will assist claimants in obtaining these additional records.

Section 79.31(h) Primary Lung Cancer. One commenter requested that the Department provide a definition for ''*in situ*'' lung cancer. ''*In situ*'' lung cancer means that the cancerous cells have not left the tissue compartment of origin. It is a term of medical art that sometimes appears in claimants' medical records. In order to make it clear that such a term does not disqualify a claimant, the final rule includes it in the general definition of lung cancer.

Section 79.31(j) Fibrosis of the Lung or Pulmonary Fibrosis. One commenter requested that the Department provide more detailed descriptions of the types of medical evidence that would be considered a diagnosis of pulmonary fibrosis for deceased miners. Because of the many types of evidence that can satisfy this condition, providing a list of all conditions that describe the existence of pulmonary fibrosis is impossible. The regulations presently identify specific records and results required for living miners. However, cases involving deceased miners, where recent x-rays are not available, often require a thorough analysis by a medical expert who is qualified to evaluate a multitude of findings and determine by a preponderance of the evidence whether a claimant contracted a compensable disease. Since the evidence is different in each case, identifying every qualifying condition is not feasible.

Section 79.33 Proof of Employment in a uranium mine. Several commenters suggested that contemporaneous records do not exist to establish complete employment histories for underground uranium miners, particularly for those who worked in small mining operations. This issue was addressed in the original regulations, and the discussion offered in connection with those regulations still applies. That is, we have seen no evidence to support the assertion that contemporaneous records do not exist. Our experience reveals that social security records are accurate and comprehensive. In the very few cases where claimants worked for companies that failed to report earnings, claimants can provide federal or state income tax records. Moreover, numerous sources, such as NIOSH, the University of New Mexico School of Medicine, the Colorado Bureau of Mines, and numerous mining companies, have contemporaneous records to establish individual mining histories. In cases where claimants independently operated small mines and failed to earn a sufficient income to report to federal or state agencies, Atomic Energy Commission shipping records will reflect the name of the operators, which may often be used to establish exposure.

Section 79.34 Proof of working level month exposure to radiation. One commenter noted concern that it is not possible to determine accurate radiation exposure levels in small mines because of the lack of readings taken from those mines. The commenter asserted that readings were taken only in the larger mines, where better ventilation systems were presumably employed. The NIOSH records used by the Department, however, do include exposure readings from many small mines. Moreover, the readings taken from the larger mines do not necessarily reflect lower exposure readings. In instances where exposure levels are unavailable for a particular mine, the regulations allow the RECA Program to use readings from other mines in the same geographical area, which typically include readings from mines of various sizes.

Another commenter expressed concern that radiation exposure measurements were taken from areas of the mine where the working levels were lower and, therefore, the readings do not accurately reflect exposure for purposes of calculating working level months. This issue was discussed in connection with the original regulations and that discussion still applies. See 57 FR 12432 (1992). Principally, Congress was aware that there were variations in the measurement of working levels in the mines but chose to set defined minimum levels based on the measurement data that existed. We must presume that those minimum levels set by Congress take into account the problems associated with the collection of the data. Moreover, there is simply no method of calculation that would result in total accuracy. Working level measurements varied widely within each mine in terms of time and location. We have found no evidence, however, that suggests that readings were taken only in areas where working levels were low. To the contrary, the numerous higher-level exposure readings included in the NIOSH database indicate that this was not the practice.

One commenter noted that there is limited exposure data from small mining operations because NIOSH did not conduct radiation measurements until the mid-1960s, although uranium mining began twenty years earlier. The Department has access to Public Health Service records, which provide radiation exposure measurements that were recorded as early as 1950. To determine the exposure levels for 1947 through 1949, the Department applies the methodology outlined in the current regulations at 28 CFR 79.34(g)(2).

Section 79.36 Proof of non-malignant respiratory disease

Section 79.36(d)(1)(ii)(2) High resolution computed tomography scans and interpretation. There were several substantive comments regarding medical standards for the use of HRCT reports in diagnosing non-malignant respiratory diseases. Commenters included leading thoracic practitioners from major medical teaching facilities around the country. Their concerns specifically addressed such issues as scanner setting technique, use of non-conforming nomenclature, the lack of training in interpreting HRCT reports that is provided by most accredited radiology residency programs, and the absence of standardized testing protocols. While the Department sought out scientists in the medical community who had experience and expertise in the area to initially develop the proposed HRCT evaluation criteria, ''recognized'' standards by which to use HRCT reports to diagnose pulmonary fibrosis and the other compensable non-malignant respiratory diseases are still not available. The Department has determined, therefore, that it would be premature at this time to implement the use of HRCT reports as a diagnostic tool. As soon as recognized standards for evaluating HRCT reports develop, the Department will introduce appropriate regulations.

79.36(d)(1)(ii)(B)(1) Pulmonary function tests. One commenter stated that the pulmonary function test (''PFT'') requirements are arbitrary and too stringent. The existing regulations defined pulmonary impairment as either a forced expiratory volume in one second (''FEV1'') or forced vital capacity (''FVC'') result less than or equal to 75% of the predicted value. In the amending regulations, the Department proposed to liberalize this definition in accordance with the recommendations of the American Thoracic Society. In the final rule, pulmonary impairment is defined as FEV1 or FVC less than or equal to 80% of the predicted value.

Another commenter suggested that the Department adopt ethnic-specific PFT standards for Native Americans. The Department has declined to adopt this recommendation for several reasons. First, there is insufficient

statistical confidence in the data obtained in the limited studies on this issue. To incorporate such a distinction at this time into a legal compensation scheme would be premature. Second, the Department will not adopt standards that might adversely discriminate against any one particular community. Third, acceptable PFT standards do not exist for each ethnic group within the subject population. Finally, the current regulations provide an alternative means by which to establish functional impairment, namely, arterial blood-gas (''ABG'') studies. Any inadequacies that may exist in the PFT standards can be avoided entirely with an ABG study, which is unaffected by physiological differences among ethnic groups.

79.36(d)(1)(ii)(B)(2) Arterial blood-gas studies. Another commenter sought clarification on the interpretation of arterial blood gas (''ABG'') studies when results fall between the values set forth in the tables in appendix B of the implementing regulations. When reported pCO_2 results fall between values listed in those tables, the Department will interpolate the corresponding qualifying pO_2 value.

One commenter indicated that the Department should create new tables reflecting lower pO_2 values as altitude increases and including separate pO_2 values for every 1,000 feet above sea level. The Department consulted with its designated experts at NIOSH and requested that they study the existing ABG tables, specifically focusing their inquiry on the effects of revising the ABG tables to reflect impairment values broken down by 1,000 feet increments. The NIOSH experts advised that specifying impairment levels (reflected by pO_2 and pCO_2 values) for every 1,000 feet change in elevation would actually disqualify many claimants from compensation. The ABG tables as they now exist, providing impairment values broken down into only two altitude categories, are quite generous. Narrowing the altitude intervals would decrease, rather than increase, a claimant's chance of satisfying the impairment requirements.

Section 79.36(e) Medical review. One commenter asserted that medical review of HRCT reports and ''B'' reader interpretations of chest x-rays by medical consultants is burdensome and not in accordance with the spirit of the Act. Section 6(b)(2) of the Act, however, specifically designates the NIOSH as a source for consultation when deemed necessary in making medical determinations. Given the highly technical nature of many of the eligibility criteria, expert opinions and guidance are necessary to resolve many claims. As the Department administers a compensation program for eligible individuals, it is in the public interest to subject claims to appropriate scrutiny.

Section 79.37 Proof of smoking, nonsmoking, and age. Several commenters argued that affidavits should be accepted to establish smoking status when medical records are silent, incomplete, or reflect unclear or conflicting information regarding an individual's smoking history. In order to prove a history of non-smoking, the Department requires certain medical documentation created within the period six months before and six months after the date of diagnosis of a compensable disease. The final rule, however, seeks to liberalize the proof requirement by allowing claimants to submit affidavits regarding smoking history in the event that the required medical records no longer exist, or fail to contain information pertaining to the claimant's smoking history.

Subpart F—Procedures

Section 79.51 Filing of Claims

One commenter requested clarification of the number of times a claim may be filed, and how the revised regulations would affect the limitations on filing. A related comment suggested that we apply the revised regulations to pending claims rather than requiring claimants to re-file for consideration under those regulations. We concur with this suggestion. The final rule allows claimants who filed claims prior to the rule's implementation and were denied compensation to file another three times. Moreover, the revised regulations will apply to all claims pending as of April 21, 1999, the date the final rule becomes effective, regardless of when those claims were filed.

Certifications and Determinations

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule affects only individuals filing claims under the RECA. Therefore, this rule does not have a significant economic impact on a substantial number of small entities, as that term is defined in 5 U.S.C. 601(6). This rule, however, is a significant regulatory action under Executive Order 12866 and, accordingly, has been reviewed by the Office of Management and Budget. The rule is not a major rule as defined by 5 U.S.C. 804(2) nor is it a rule having federalism implications warranting assessment in accordance with section 6 of Executive Order 12612. In addition, this rule is in full compliance with the Paperwork Reduction Act.

List of Subjects in 28 CFR Part 79

Administrative practice and procedure, Authority delegations (Government agencies), Cancer, Claims, Radiation Exposure Compensation Act, Radioactive materials, Reporting and recordkeeping requirements, Underground mining, Uranium.

Accordingly, part 79 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 79—CLAIMS UNDER THE RADIATION EXPOSURE COMPENSATION ACT

1. The authority citation for part 79 continues to read as follows:

Authority: Sec. 6(b) and (j), Pub.L. 101–426, 104 Stat. 920 (42 U.S.C. § 2210 note).

2. Section 79.4(c) is amended by redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(4) and (c)(5), adding a new paragraph (c)(3) and revising paragraphs (c)(1) and (c)(2) and new paragraphs (c)(4) and (c)(5) as follows:

§ 79.4 Burden of proof, production of documents, presumptions, and affidavits.

* * * * *

(c) * * *

(1) Eligibility of family members as set forth in § 79.51(e), (f), (g), (h), or (i);

(2) Other compensation received as set forth in § 79.55(c) or (d);

(3) Smoking and/or drinking history and/or age at diagnosis as set forth in § 79.27(d) and § 79.37(d);

(4) The amount of coffee consumed as set forth in § 79.27(e); or

(5) Mining information as set forth in § 79.33(b)(2).

3. Section 79.5 is amended by adding paragraph (c) to read as follows:

§ 79.5 Requirements for written medical documentation, contemporaneous records, and other records or documents.

* * * * *

(c) To establish eligibility the claimant or eligible surviving beneficiary may be required to provide, where appropriate, additional contemporaneous records to the extent they exist or an authorization to release additional contemporaneous records or a statement by the custodian(s) of the records certifying that the requested record(s) no longer exist. Nothing in the regulations in this section shall be construed to limit the Assistant Director's ability to require additional documentation.

4. In § 79.21, paragraph (d) is amended by adding one new sentence

after the second sentence to read as follows:

§ 79.21 Definitions.

* * * * *

(d) * * * The term excludes an individual who smoked more than 20 pack years, but who can establish in accordance with § 79.27 that he or she stopped smoking at least fifteen (15) years prior to the diagnosis of primary cancer of the esophagus, pharynx, or pancreas, and did not resume smoking at any time thereafter.

* * * * *

5. Section 79.27 is amended by revising the heading, re-designating paragraph (c) as new paragraph (e), adding new paragraphs (c) and (d), and revising paragraphs (a) and (b), to read as follows:

§ 79.27 Proof of no heavy smoking, no heavy drinking, no heavy coffee drinking and no indication of the presence of hepatitis B and cirrhosis.

(a)(1) If the claimant or eligible surviving beneficiary is claiming eligibility under this subpart for primary cancer of the esophagus, pharynx, pancreas, or liver, the claimant or eligible surviving beneficiary must submit, in addition to proof of the disease, all medical records listed below from any hospital, medical facility, or health care provider that were created within the period six (6) months before and six (6) months after the date of diagnosis of primary cancer of the esophagus, pharynx, pancreas, or liver:

(i) All history and physical examination reports;

(ii) All operative and consultation reports;

(iii) All pathology reports; and

(iv) All physician, hospital, and health care facility admission and discharge summaries.

(2) In the event that any of the records in paragraph (a)(1) of this section no longer exist, the claimant or eligible surviving beneficiary must submit a certified statement by the custodian(s) of those records to that effect.

(b) If the medical records listed in paragraph (a) of this section, or information possessed by the state cancer or tumor registries, reflects that the claimant was a heavy smoker or a heavy drinker or indicates the presence of hepatitis B and/or cirrhosis, the Radiation Exposure Compensation Unit will notify the claimant or eligible surviving beneficiary and afford that individual the opportunity to submit other written medical documentation or contemporaneous records in accordance with § 79.52(b) to establish that the claimant was not a heavy smoker or heavy drinker or that there was no indication of hepatitis B and/or cirrhosis.

(c) The Program may also require that the claimant or eligible surviving beneficiary provide additional medical records or other contemporaneous records and/or an authorization to release such additional medical and contemporaneous records as may be needed to make a determination regarding the indication of the presence of hepatitis B and/or cirrhosis and the claimant's history of smoking and alcohol consumption.

(d) If the custodian(s) of the records listed in paragraph (a) of this section and the records requested in accordance with paragraph (c) of this section certifies that a claimant's records no longer exist, and if the state cancer or tumor registries do not contain information concerning the claimant's history of smoking or alcohol-consumption, the Assistant Director may require that the claimant or eligible surviving beneficiary submit an affidavit (or declaration) made under penalty of perjury detailing the histories or lack thereof and, if the affiant (or declarant) is the eligible surviving beneficiary, the basis for such knowledge. This affidavit (or declaration) will be considered by the Assistant Director in making a determination concerning the claimant's history of smoking and alcohol consumption.

(e) * * *

6. Section 79.31 is amended by revising paragraphs (e) and (f) and the second sentence of paragraph (h), to read as follows:

§ 79.31 Definitions.

* * * * *

(e) *Non-smoker* means an individual who never smoked tobacco cigarette products or who smoked less than the amount defined in paragraph (f) of this section and includes an individual who smoked at least one (1) pack year but whose acceptable documentation as set forth in § 79.37 establishes that he or she stopped smoking at least fifteen (15) years prior to the diagnosis of primary cancer of the lung, pulmonary fibrosis, fibrosis of the lung, cor pulmonale related to fibrosis of the lung, or moderate or severe silicosis or pneumoconiosis, and that he or she did not resume smoking at any time thereafter.

(f) *Smoker* means an individual who has smoked at least one (1) pack year of cigarette products, and who is not deemed a non-smoker by virtue of paragraph (e) of this section.

* * * * *

(h) * * * The term includes cancers *in situ*.

* * * * *

8. Section 79.36 is amended by revising the first sentence of paragraph (a), revising paragraph (d)(1)(ii), and adding new paragraph (e) to read as follows:

§ 79.36 Proof of non-malignant respiratory disease.

(a) Written medical documentation is required in all cases to prove that the claimant developed a non-malignant respiratory disease. * * *

* * * * *

(d) * * *

(1) * * *

(i) * * *

(ii) If the claimant is alive, (A) One of the following:

(*1*) *Chest x-rays and two ''B'' reader interpretations.* A chest x-ray administered in accordance with standard techniques on full size film at quality 1 or 2, and interpretative reports of the x-ray by two certified ''B'' readers classifying the existence of fibrosis of category 1/0 or higher according to the ILO 1980, or subsequent revisions; or

(*2*) *Pathology reports of tissue biopsies.* A pathology report of a tissue biopsy, but only if performed for medically justified reasons; and

(B) One or more of the following:

(*1*) *Pulmonary function tests.* Pulmonary function tests consisting of three tracings recording the results of the forced expiratory volume in one second (FEV1) and the forced vital capacity (FVC) administered and reported in accordance with the Standardization of Spirometry—1987 Update by the American Thoracic Society, and reflecting values for FEV1 or FVC that are less than or equal to 80% of the predicted value for an individual of the claimant's age, sex, and height, as set forth in the Tables in Appendix A; or

(*2*) *Arterial blood-gas studies.* An arterial blood-gas study administered at rest in a sitting position, or an exercise arterial blood-gas test, reflecting values equal to or less than the values set forth in the Tables in Appendix B of this part.

* * * * *

(e) The Radiation Exposure Compensation Unit may seek qualified medical review of ''B'' reader interpretations or pathology reports of tissue biopsies submitted by a claimant or eligible surviving beneficiary or obtain additional ''B'' reader interpretations or pathology reports of tissue biopsies at any time to ensure that appropriate weight is given to this evidence and to guarantee uniformity

and reliability. This review may include obtaining additional chest x-ray interpretations and additional pathology reports of tissue biopsies.

9. Section 79.37 is amended by revising the section heading, revising paragraphs (a) and (b), and adding new paragraphs (c) and (d) to read as follows:

§ 79.37 Proof of non-smoker and diagnosis prior to age 45.

(a)(1) In order to prove a history of non-smoking for purposes of § 79.32(c)(1), and/or diagnosis of a compensable disease prior to age 45 for purposes of § 79.32(c)(2)(i), the claimant or eligible surviving beneficiary must submit all medical records listed in this paragraph (a)(1) from any hospital, medical facility, or health care provider that were created within the period six (6) months before and six (6) months after the date of diagnosis of primary lung cancer or a compensable nonmalignant respiratory disease:

(i) All history and physical examination reports;

(ii) All operative and consultation reports;

(iii) All pathology reports;

(iv) All physician, hospital, and health care facility admission and discharge summaries.

(2) In the event that any of the records in paragraph (a)(1) no longer exist, the claimant or eligible surviving beneficiary must submit a certified statement by the custodian(s) of those records to that effect.

(b) If, after a review of the records listed in paragraph (a) of this section, and/or the information possessed by the PHS, NIOSH, state cancer or tumor registries, state authorities, or the custodian of a federally supported health-related study, the Assistant Director finds that the claimant was a smoker, and/or that the claimant was diagnosed with a compensable disease after age 45, the Unit will notify the claimant or eligible surviving beneficiary and afford that individual the opportunity to submit other written medical documentation in accordance with § 79.52(b) to establish that the claimant was a non-smoker and/or was diagnosed with a compensable disease prior to age 45.

(c) The Unit may also require that the claimant or eligible surviving beneficiary provide additional medical records or other contemporaneous records and/or an authorization to release such additional medical and contemporaneous records as may be needed to make a determination regarding the claimant's smoking history and/or age at diagnosis with a compensable disease.

(d) If the custodian(s) of the records listed in paragraph (a) of this section and the records requested in accordance with paragraph (c) of this section certifies that a claimant's records no longer exist, and information possessed by the PHS, NIOSH, state cancer or tumor registries, state authorities, or the custodian of a federally supported health-related study do not contain information pertaining to the claimant's smoking history, the Assistant Director may require that the claimant or eligible surviving beneficiary submit an affidavit (or declaration) made under penalty of perjury detailing the claimant's smoking history or lack thereof and, if the affiant (or declarant) is the eligible surviving beneficiary, the basis for such knowledge. This affidavit (or declaration) will be considered by the Assistant Director in making a determination concerning the claimant's history of smoking.

10. In § 79.51, paragraph (j) is amended by revising paragraphs (j)(3) and (j)(4), adding paragraph (j)(5) and adding a sentence at the end of the concluding text to read as follows:

§ 79.51 Filing of claims.

* * * * *

(j) * * *

(3) Onsite participation in a nuclear test,

(4) Exposure to a defined minimum level of radiation in a uranium mine or mines during a designated time period, or

(5) The identity of the claimant and/or surviving beneficiary.

* * * Claims filed prior to April 21, 1999 will not be included in determining the number of claims filed.

11. In § 79.55, paragraphs (d)(1)(i) and (d)(1)(ii) are revised to read as follows:

§ 79.55 Procedures for payment of claims.

* * * * *

(d) * * *

(1) * * *

(i) Any disability payments or compensation benefits paid to the claimant and his/her dependents while the claimant is alive; and

(ii) Any Dependency and Indemnity Compensation payments made to survivors due to death related to the illness for which the claim under the Act is submitted.

* * * * *

12. Appendix A to Part 79 is revised to read as follows:

Appendix A to Part 79—Pulmonary Function Tables

TABLE 1.—MALES FVC

[80% of Predicted; Knudson 1983]

Ht.	Age										
	35	37	39	41	43	45	47	49	51	53	55
56.0	1.74	1.70	1.65	1.60	1.55	1.51	1.46	1.41	1.36	1.32	1.27
56.5	1.83	1.78	1.73	1.69	1.64	1.59	1.54	1.50	1.45	1.40	1.35
57.0	1.92	1.87	1.82	1.77	1.72	1.68	1.63	1.58	1.53	1.49	1.44
57.5	2.00	1.95	1.91	1.86	1.81	1.76	1.72	1.67	1.62	1.57	1.52
58.0	2.09	2.04	1.99	1.94	1.90	1.85	1.80	1.75	1.71	1.66	1.61
58.5	2.17	2.13	2.08	2.03	1.98	1.93	1.89	1.84	1.79	1.74	1.70
59.0	2.26	2.21	2.16	2.12	2.07	2.02	1.97	1.92	1.88	1.83	1.78
59.5	2.34	2.30	2.25	2.20	2.15	2.11	2.06	2.01	1.96	1.92	1.87
60.0	2.43	2.38	2.33	2.29	2.24	2.19	2.14	2.10	2.05	2.00	1.95
60.5	2.52	2.47	2.42	2.37	2.33	2.28	2.23	2.18	2.13	2.09	2.04
61.0	2.60	2.55	2.51	2.46	2.41	2.36	2.32	2.27	2.22	2.17	2.12
61.5	2.69	2.64	2.59	2.54	2.50	2.45	2.40	2.35	2.31	2.26	2.21
62.0	2.77	2.73	2.68	2.63	2.58	2.53	2.49	2.44	2.39	2.34	2.30
62.5	2.86	2.81	2.76	2.72	2.67	2.62	2.57	2.53	2.48	2.43	2.38
63.0	2.94	2.90	2.85	2.80	2.75	2.71	2.66	2.61	2.56	2.52	2.47
63.5	3.03	2.98	2.94	2.89	2.84	2.79	2.74	2.70	2.65	2.60	2.55
64.0	3.12	3.07	3.02	2.97	2.93	2.88	2.83	2.78	2.73	2.69	2.64
64.5	3.20	3.15	3.11	3.06	3.01	2.96	2.92	2.87	2.82	2.77	2.73

TABLE 1.—MALES FVC—Continued

[80% of Predicted; Knudson 1983]

Ht.	Age										
	35	37	39	41	43	45	47	49	51	53	55
65.0	3.29	3.24	3.19	3.14	3.10	3.05	3.00	2.95	2.91	2.86	2.81
65.5	3.37	3.33	3.28	3.23	3.18	3.14	3.09	3.04	2.99	2.94	2.90
66.0	3.46	3.41	3.36	3.32	3.27	3.22	3.17	3.13	3.08	3.03	2.98
66.5	3.54	3.50	3.45	3.40	3.35	3.31	3.26	3.21	3.16	3.12	3.07
67.0	3.63	3.58	3.54	3.49	3.44	3.39	3.34	3.30	3.25	3.20	3.15
67.5	3.72	3.67	3.62	3.57	3.53	3.48	3.43	3.38	3.34	3.29	3.24
68.0	3.80	3.75	3.71	3.66	3.61	3.56	3.52	3.47	3.42	3.37	3.33
68.5	3.89	3.84	3.79	3.74	3.70	3.65	3.60	3.55	3.51	3.46	3.41
69.0	3.97	3.93	3.88	3.83	3.78	3.74	3.69	3.64	3.59	3.54	3.50
69.5	4.06	4.01	3.96	3.92	3.87	3.82	3.77	3.73	3.68	3.63	3.58
70.0	4.15	4.10	4.05	4.00	3.95	3.91	3.86	3.81	3.76	3.72	3.67
70.5	4.23	4.18	4.14	4.09	4.04	3.99	3.94	3.90	3.85	3.80	3.75
71.0	4.32	4.27	4.22	4.17	4.13	4.08	4.03	3.98	3.94	3.89	3.84
71.5	4.40	4.35	4.31	4.26	4.21	4.16	4.12	4.07	4.02	3.97	3.93
72.0	4.49	4.44	4.39	4.35	4.30	4.25	4.20	4.15	4.11	4.06	4.01
72.5	4.57	4.53	4.48	4.43	4.38	4.34	4.29	4.24	4.19	4.14	4.10
73.0	4.66	4.61	4.56	4.52	4.47	4.42	4.37	4.33	4.28	4.23	4.18
73.5	4.75	4.70	4.65	4.60	4.55	4.51	4.46	4.41	4.36	4.32	4.27
74.0	4.83	4.78	4.74	4.69	4.64	4.59	4.55	4.50	4.45	4.40	4.35
74.5	4.92	4.87	4.82	4.77	4.73	4.68	4.63	4.58	4.54	4.49	4.44
75.0	5.00	4.96	4.91	4.86	4.81	4.76	4.72	4.67	4.62	4.57	4.53
75.5	5.09	5.04	4.99	4.95	4.90	4.85	4.80	4.75	4.71	4.66	4.61
76.0	5.17	5.13	5.08	5.03	4.98	4.94	4.89	4.84	4.79	4.75	4.70
76.5	5.26	5.21	5.16	5.12	5.07	5.02	4.97	4.93	4.88	4.83	4.78
77.0	5.35	5.30	5.25	5.20	5.16	5.11	5.06	5.01	4.96	4.92	4.87
77.5	5.43	5.38	5.34	5.29	5.24	5.19	5.15	5.10	5.05	5.00	4.95
78.0	5.52	5.47	5.42	5.37	5.33	5.28	5.23	5.18	5.14	5.09	5.04
78.5	5.60	5.56	5.51	5.46	5.41	5.36	5.32	5.27	5.22	5.17	5.13
79.0	5.69	5.64	5.59	5.55	5.50	5.45	5.40	5.35	5.31	5.26	5.21
79.5	5.77	5.73	5.68	5.63	5.58	5.54	5.49	5.44	5.39	5.35	5.30
80.0	5.86	5.81	5.76	5.72	5.67	5.62	5.57	5.53	5.48	5.43	5.38
80.5	5.95	5.90	5.85	5.80	5.76	5.71	5.66	5.61	5.56	5.52	5.47
81.0	6.03	5.98	5.94	5.89	5.84	5.79	5.75	5.70	5.65	5.60	5.55
81.5	6.12	6.07	6.02	5.97	5.93	5.88	5.83	5.78	5.74	5.69	5.64
82.0	6.20	6.16	6.11	6.06	6.01	5.96	5.92	5.87	5.82	5.77	5.73
82.5	6.29	6.24	6.19	6.15	6.10	6.05	6.00	5.96	5.91	5.86	5.81
83.0	6.37	6.33	6.28	6.23	6.18	6.14	6.09	6.04	5.99	5.95	5.90
83.5	6.46	6.41	6.37	6.32	6.27	6.22	6.17	6.13	6.08	6.03	5.98
84.0	6.55	6.50	6.45	6.40	6.36	6.31	6.26	6.21	6.16	6.12	6.07
84.5	6.63	6.58	6.54	6.49	6.44	6.39	6.35	6.30	6.25	6.20	6.16
85.0	6.72	6.67	6.62	6.57	6.53	6.48	6.43	6.38	6.34	6.29	6.24

TABLE 1A.—MALES FVC

[80% of Predicted; Knudson 1983]

Ht.	Age									
	57	59	61	63	65	67	69	71	73	75
56.0	1.22	1.17	1.12	1.08	1.03	0.98	0.93	0.89	0.84	0.79
56.5	1.31	1.26	1.21	1.16	1.11	1.07	1.02	0.97	0.92	0.88
57.0	1.39	1.34	1.30	1.25	1.20	1.15	1.11	1.06	1.01	0.96
57.5	1.48	1.43	1.38	1.33	1.29	1.24	1.19	1.14	1.10	1.05
58.0	1.56	1.52	1.47	1.42	1.37	1.32	1.28	1.23	1.18	1.13
58.5	1.65	1.60	1.55	1.51	1.46	1.41	1.36	1.31	1.27	1.22
59.0	1.73	1.69	1.64	1.59	1.54	1.50	1.45	1.40	1.35	1.31
59.5	1.82	1.77	1.72	1.68	1.63	1.58	1.53	1.49	1.44	1.39
60.0	1.91	1.86	1.81	1.76	1.72	1.67	1.62	1.57	1.52	1.48
60.5	1.99	1.94	1.90	1.85	1.80	1.75	1.71	1.66	1.61	1.56
61.0	2.08	2.03	1.98	1.93	1.89	1.84	1.79	1.74	1.70	1.65
61.5	2.16	2.12	2.07	2.02	1.97	1.92	1.88	1.83	1.78	1.73
62.0	2.25	2.20	2.15	2.11	2.06	2.01	1.96	1.91	1.87	1.82
62.5	2.33	2.29	2.24	2.19	2.14	2.10	2.05	2.00	1.95	1.91
63.0	2.42	2.37	2.32	2.28	2.23	2.18	2.13	2.09	2.04	1.99
63.5	2.51	2.46	2.41	2.36	2.32	2.27	2.22	2.17	2.12	2.08
64.0	2.59	2.54	2.50	2.45	2.40	2.35	2.31	2.26	2.21	2.16
64.5	2.68	2.63	2.58	2.53	2.49	2.44	2.39	2.34	2.30	2.25
65.0	2.76	2.72	2.67	2.62	2.57	2.52	2.48	2.43	2.38	2.33

TABLE 1A.—MALES FVC—Continued

[80% of Predicted; Knudson 1983]

Ht.	Age									
	57	59	61	63	65	67	69	71	73	75
65.5	2.85	2.80	2.75	2.71	2.66	2.61	2.56	2.52	2.47	2.42
66.0	2.93	2.89	2.84	2.79	2.74	2.70	2.65	2.60	2.55	2.51
66.5	3.02	2.97	2.93	2.88	2.83	2.78	2.73	2.69	2.64	2.59
67.0	3.11	3.06	3.01	2.96	2.92	2.87	2.82	2.77	2.72	2.68
67.5	3.19	3.14	3.10	3.05	3.00	2.95	2.91	2.86	2.81	2.76
68.0	3.28	3.23	3.18	3.13	3.09	3.04	2.99	2.94	2.90	2.85
68.5	3.36	3.32	3.27	3.22	3.17	3.13	3.08	3.03	2.98	2.93
69.0	3.45	3.40	3.35	3.31	3.26	3.21	3.16	3.12	3.07	3.02
69.5	3.53	3.49	3.44	3.39	3.34	3.30	3.25	3.20	3.15	3.11
70.0	3.62	3.57	3.53	3.48	3.43	3.38	3.33	3.29	3.24	3.19
70.5	3.71	3.66	3.61	3.56	3.52	3.47	3.42	3.37	3.33	3.28
71.0	3.79	3.74	3.70	3.65	3.60	3.55	3.51	3.46	3.41	3.36
71.5	3.88	3.83	3.78	3.73	3.69	3.64	3.59	3.54	3.50	3.45
72.0	3.96	3.92	3.87	3.82	3.77	3.73	3.68	3.63	3.58	3.53
72.5	4.05	4.00	3.95	3.91	3.86	3.81	3.76	3.72	3.67	3.62
73.0	4.14	4.09	4.04	3.99	3.94	3.90	3.85	3.80	3.75	3.71
73.5	4.22	4.17	4.13	4.08	4.03	3.98	3.93	3.89	3.84	3.79
74.0	4.31	4.26	4.21	4.16	4.12	4.07	4.02	3.97	3.93	3.88
74.5	4.39	4.34	4.30	4.25	4.20	4.15	4.11	4.06	4.01	3.96
75.0	4.48	4.43	4.38	4.34	4.29	4.24	4.19	4.14	4.10	4.05
75.5	4.56	4.52	4.47	4.42	4.37	4.33	4.28	4.23	4.18	4.13
76.0	4.65	4.60	4.55	4.51	4.46	4.41	4.36	4.32	4.27	4.22
76.5	4.74	4.69	4.64	4.59	4.54	4.50	4.45	4.40	4.35	4.31
77.0	4.82	4.77	4.73	4.68	4.63	4.58	4.54	4.49	4.44	4.39
77.5	4.91	4.86	4.81	4.76	4.72	4.67	4.62	4.57	4.53	4.48
78.0	4.99	4.95	4.90	4.85	4.80	4.75	4.71	4.66	4.61	4.56
78.5	5.08	5.03	4.98	4.94	4.89	4.84	4.79	4.74	4.70	4.65
79.0	5.16	5.12	5.07	5.02	4.97	4.93	4.88	4.83	4.78	4.74
79.5	5.25	5.20	5.15	5.11	5.06	5.01	4.96	4.92	4.87	4.82
80.0	5.34	5.29	5.24	5.19	5.15	5.10	5.05	5.00	4.95	4.91
80.5	5.42	5.37	5.33	5.28	5.23	5.18	5.14	5.09	5.04	4.99
81.0	5.51	5.46	5.41	5.36	5.32	5.27	5.22	5.17	5.13	5.08
81.5	5.59	5.55	5.50	5.45	5.40	5.35	5.31	5.26	5.21	5.16
82.0	5.68	5.63	5.58	5.54	5.49	5.44	5.39	5.34	5.30	5.25
82.5	5.76	5.72	5.67	5.62	5.57	5.53	5.48	5.43	5.38	5.34
83.0	5.85	5.80	5.75	5.71	5.66	5.61	5.56	5.52	5.47	5.42
83.5	5.94	5.89	5.84	5.79	5.75	5.70	5.65	5.60	5.55	5.51
84.0	6.02	5.97	5.93	5.88	5.83	5.78	5.74	5.69	5.64	5.59
84.5	6.11	6.06	6.01	5.96	5.92	5.87	5.82	5.77	5.73	5.68
85.0	6.19	6.15	6.10	6.05	6.00	5.95	5.91	5.86	5.81	5.76

TABLE 2.—MALES FEV1

[80% of Predicted; Knudson 1983]

Ht.	Age										
	35	37	39	41	43	45	47	49	51	53	55
56.0	1.54	1.49	1.44	1.40	1.35	1.30	1.26	1.21	1.16	1.12	1.07
56.5	1.61	1.56	1.51	1.47	1.42	1.37	1.33	1.28	1.23	1.18	1.14
57.0	1.67	1.63	1.58	1.53	1.49	1.44	1.39	1.35	1.30	1.25	1.21
57.5	1.74	1.69	1.65	1.60	1.55	1.51	1.46	1.41	1.37	1.32	1.27
58.0	1.81	1.76	1.71	1.67	1.62	1.57	1.53	1.48	1.43	1.39	1.34
58.5	1.88	1.83	1.78	1.74	1.69	1.64	1.60	1.55	1.50	1.46	1.41
59.0	1.94	1.90	1.85	1.80	1.76	1.71	1.66	1.62	1.57	1.52	1.48
59.5	2.01	1.96	1.92	1.87	1.82	1.78	1.73	1.68	1.64	1.59	1.54
60.0	2.08	2.03	1.98	1.94	1.89	1.84	1.80	1.75	1.70	1.66	1.61
60.5	2.15	2.10	2.05	2.01	1.96	1.91	1.87	1.82	1.77	1.73	1.68
61.0	2.21	2.17	2.12	2.07	2.03	1.98	1.93	1.89	1.84	1.79	1.75
61.5	2.28	2.23	2.19	2.14	2.09	2.05	2.00	1.95	1.91	1.86	1.81
62.0	2.35	2.30	2.26	2.21	2.16	2.11	2.07	2.02	1.97	1.93	1.88
62.5	2.42	2.37	2.32	2.28	2.23	2.18	2.14	2.09	2.04	2.00	1.95
63.0	2.48	2.44	2.39	2.34	2.30	2.25	2.20	2.16	2.11	2.06	2.02
63.5	2.55	2.50	2.46	2.41	2.36	2.32	2.27	2.22	2.18	2.13	2.08
64.0	2.62	2.57	2.53	2.48	2.43	2.39	2.34	2.29	2.25	2.20	2.15
64.5	2.69	2.64	2.59	2.55	2.50	2.45	2.41	2.36	2.31	2.27	2.22
65.0	2.75	2.71	2.66	2.61	2.57	2.52	2.47	2.43	2.38	2.33	2.29
65.5	2.82	2.77	2.73	2.68	2.63	2.59	2.54	2.49	2.45	2.40	2.35

TABLE 2.—MALES FEV1—Continued

[80% of Predicted; Knudson 1983]

Ht.	Age										
	35	37	39	41	43	45	47	49	51	53	55
66.0	2.89	2.84	2.80	2.75	2.70	2.66	2.61	2.56	2.52	2.47	2.42
66.5	2.96	2.91	2.86	2.82	2.77	2.72	2.68	2.63	2.58	2.54	2.49
67.0	3.02	2.98	2.93	2.88	2.84	2.79	2.74	2.70	2.65	2.60	2.56
67.5	3.09	3.05	3.00	2.95	2.90	2.86	2.81	2.76	2.72	2.67	2.62
68.0	3.16	3.11	3.07	3.02	2.97	2.93	2.88	2.83	2.79	2.74	2.69
68.5	3.23	3.18	3.13	3.09	3.04	2.99	2.95	2.90	2.85	2.81	2.76
69.0	3.29	3.25	3.20	3.15	3.11	3.06	3.01	2.97	2.92	2.87	2.83
69.5	3.36	3.32	3.27	3.22	3.18	3.13	3.08	3.03	2.99	2.94	2.89
70.0	3.43	3.38	3.34	3.29	3.24	3.20	3.15	3.10	3.06	3.01	2.96
70.5	3.50	3.45	3.40	3.36	3.31	3.26	3.22	3.17	3.12	3.08	3.03
71.0	3.56	3.52	3.47	3.42	3.38	3.33	3.28	3.24	3.19	3.14	3.10
71.5	3.63	3.59	3.54	3.49	3.45	3.40	3.35	3.31	3.26	3.21	3.17
72.0	3.70	3.65	3.61	3.56	3.51	3.47	3.42	3.37	3.33	3.28	3.23
72.5	3.77	3.72	3.67	3.63	3.58	3.53	3.49	3.44	3.39	3.35	3.30
73.0	3.83	3.79	3.74	3.69	3.65	3.60	3.55	3.51	3.46	3.41	3.37
73.5	3.90	3.86	3.81	3.76	3.72	3.67	3.62	3.58	3.53	3.48	3.44
74.0	3.97	3.92	3.88	3.83	3.78	3.74	3.69	3.64	3.60	3.55	3.50
74.5	4.04	3.99	3.94	3.90	3.85	3.80	3.76	3.71	3.66	3.62	3.57
75.0	4.11	4.06	4.01	3.97	3.92	3.87	3.82	3.78	3.73	3.68	3.64
75.5	4.17	4.13	4.08	4.03	3.99	3.94	3.89	3.85	3.80	3.75	3.71
76.0	4.24	4.19	4.15	4.10	4.05	4.01	3.96	3.91	3.87	3.82	3.77
76.5	4.31	4.26	4.21	4.17	4.12	4.07	4.03	3.98	3.93	3.89	3.84
77.0	4.38	4.33	4.28	4.24	4.19	4.14	4.10	4.05	4.00	3.96	3.91
77.5	4.44	4.40	4.35	4.30	4.26	4.21	4.16	4.12	4.07	4.02	3.98
78.0	4.51	4.46	4.42	4.37	4.32	4.28	4.23	4.18	4.14	4.09	4.04
78.5	4.58	4.53	4.48	4.44	4.39	4.34	4.30	4.25	4.20	4.16	4.11
79.0	4.65	4.60	4.55	4.51	4.46	4.41	4.37	4.32	4.27	4.23	4.18
79.5	4.71	4.67	4.62	4.57	4.53	4.48	4.43	4.39	4.34	4.29	4.25
80.0	4.78	4.73	4.69	4.64	4.59	4.55	4.50	4.45	4.41	4.36	4.31
80.5	4.85	4.80	4.76	4.71	4.66	4.61	4.57	4.52	4.47	4.43	4.38
81.0	4.92	4.87	4.82	4.78	4.73	4.68	4.64	4.59	4.54	4.50	4.45
81.5	4.98	4.94	4.89	4.84	4.80	4.75	4.70	4.66	4.61	4.56	4.52
82.0	5.05	5.00	4.96	4.91	4.86	4.82	4.77	4.72	4.68	4.63	4.58
82.5	5.12	5.07	5.03	4.98	4.93	4.89	4.84	4.79	4.74	4.70	4.65
83.0	5.19	5.14	5.09	5.05	5.00	4.95	4.91	4.86	4.81	4.77	4.72
83.5	5.25	5.21	5.16	5.11	5.07	5.02	4.97	4.93	4.88	4.83	4.79
84.0	5.32	5.27	5.23	5.18	5.13	5.09	5.04	4.99	4.95	4.90	4.85
84.5	5.39	5.34	5.30	5.25	5.20	5.16	5.11	5.06	5.02	4.97	4.92
85.0	5.46	5.41	5.36	5.32	5.27	5.22	5.18	5.13	5.08	5.04	4.99

TABLE 2A.—MALES FEV1

[80% of Predicted; Knudson 1983]

Ht.	Age									
	57	59	61	63	65	67	69	71	73	75
56.0	1.02	0.98	0.93	0.88	0.84	0.79	0.74	0.70	0.65	0.60
56.5	1.09	1.04	1.00	0.95	0.90	0.86	0.81	0.76	0.72	0.67
57.0	1.16	1.11	1.07	1.02	0.97	0.93	0.88	0.83	0.79	0.74
57.5	1.23	1.18	1.13	1.09	1.04	0.99	0.95	0.90	0.85	0.81
58.0	1.29	1.25	1.20	1.15	1.11	1.06	1.01	0.97	0.92	0.87
58.5	1.36	1.31	1.27	1.22	1.17	1.13	1.08	1.03	0.99	0.94
59.0	1.43	1.38	1.34	1.29	1.24	1.20	1.15	1.10	1.06	1.01
59.5	1.50	1.45	1.40	1.36	1.31	1.26	1.22	1.17	1.12	1.08
60.0	1.56	1.52	1.47	1.42	1.38	1.33	1.28	1.24	1.19	1.14
60.5	1.63	1.59	1.54	1.49	1.45	1.40	1.35	1.30	1.26	1.21
61.0	1.70	1.65	1.62	1.56	1.51	1.47	1.42	1.37	1.33	1.28
61.5	1.77	1.72	1.67	1.63	1.58	1.53	1.49	1.44	1.39	1.35
62.0	1.83	1.79	1.74	1.69	1.65	1.60	1.55	1.51	1.46	1.41
62.5	1.90	1.86	1.81	1.76	1.72	1.67	1.62	1.58	1.53	1.48
63.0	1.97	1.92	1.88	1.83	1.78	1.74	1.69	1.64	1.60	1.55
63.5	2.04	1.99	1.94	1.90	1.85	1.80	1.76	1.71	1.66	1.62
64.0	2.10	2.06	2.01	1.96	1.92	1.87	1.82	1.78	1.73	1.68
64.5	2.17	2.13	2.08	2.03	1.99	1.94	1.89	1.85	1.80	1.75
65.0	2.24	2.19	2.15	2.10	2.05	2.01	1.96	1.91	1.87	1.82
65.5	2.31	2.26	2.21	2.17	2.12	2.07	2.03	1.98	1.93	1.89
66.0	2.38	2.33	2.28	2.24	2.19	2.14	2.09	2.05	2.00	1.95

TABLE 2A.—MALES FEV1—Continued

[80% of Predicted; Knudson 1983]

Ht.	Age									
	57	59	61	63	65	67	69	71	73	75
66.5	2.44	2.40	2.35	2.30	2.26	2.21	2.16	2.12	2.07	2.02
67.0	2.51	2.46	2.42	2.37	2.32	2.28	2.23	2.18	2.14	2.09
67.5	2.58	2.53	2.48	2.44	2.39	2.34	2.30	2.25	2.20	2.16
68.0	2.65	2.60	2.55	2.51	2.46	2.41	2.37	2.32	2.27	2.22
68.5	2.71	2.67	2.62	2.57	2.53	2.48	2.43	2.39	2.34	2.29
69.0	2.78	2.73	2.69	2.64	2.59	2.55	2.50	2.45	2.41	2.36
69.5	2.85	2.80	2.75	2.71	2.66	2.61	2.57	2.52	2.47	2.43
70.0	2.92	2.87	2.82	2.78	2.73	2.68	2.64	2.59	2.54	2.50
70.5	2.98	2.94	2.89	2.84	2.80	2.75	2.70	2.66	2.61	2.56
71.0	3.05	3.00	2.96	2.91	2.86	2.82	2.77	2.72	2.68	2.63
71.5	3.12	3.07	3.02	2.98	2.93	2.88	2.84	2.79	2.74	2.70
72.0	3.19	3.14	3.09	3.05	3.00	2.95	2.91	2.86	2.81	2.77
72.5	3.25	3.21	3.16	3.11	3.07	3.02	2.97	2.93	2.88	2.83
73.0	3.32	3.27	3.23	3.18	3.13	3.09	3.04	2.99	2.95	2.90
73.5	3.39	3.34	3.30	3.25	3.20	3.16	3.11	3.06	3.01	2.97
74.0	3.46	3.41	3.36	3.32	3.27	3.22	3.18	3.13	3.08	3.04
74.5	3.52	3.48	3.43	3.38	3.34	3.29	3.24	3.20	3.15	3.10
75.0	3.59	3.54	3.50	3.45	3.40	3.36	3.31	3.26	3.22	3.17
75.5	3.66	3.61	3.57	3.52	3.47	3.43	3.38	3.33	3.29	3.24
76.0	3.73	3.68	3.63	3.59	3.54	3.49	3.45	3.40	3.35	3.31
76.5	3.79	3.75	3.70	3.65	3.61	3.56	3.51	3.47	3.42	3.37
77.0	3.86	3.81	3.77	3.72	3.67	3.63	3.58	3.53	3.49	3.44
77.5	3.93	3.88	3.84	3.79	3.74	3.70	3.65	3.60	3.56	3.51
78.0	4.00	3.95	3.90	3.86	3.81	3.76	3.72	3.67	3.62	3.58
78.5	4.06	4.02	3.97	3.92	3.88	3.83	3.78	3.74	3.69	3.64
79.0	4.13	4.09	4.04	3.99	3.94	3.90	3.85	3.80	3.76	3.71
79.5	4.20	4.15	4.11	4.06	4.01	3.97	3.92	3.87	3.83	3.78
80.0	4.27	4.22	4.17	4.13	4.08	4.03	3.99	3.94	3.89	3.85
80.5	4.33	4.29	4.24	4.19	4.15	4.10	4.05	4.01	3.96	3.91
81.0	4.40	4.36	4.31	4.26	4.22	4.17	4.12	4.08	4.03	3.98
81.5	4.47	4.42	4.38	4.33	4.28	4.24	4.19	4.14	4.10	4.05
82.0	4.54	4.49	4.44	4.40	4.35	4.30	4.26	4.21	4.16	4.12
82.5	4.60	4.56	4.51	4.46	4.42	4.37	4.32	4.28	4.23	4.18
83.0	4.67	4.63	4.58	4.53	4.49	4.44	4.39	4.35	4.30	4.25
83.5	4.74	4.69	4.65	4.60	4.55	4.51	4.46	4.41	4.37	4.32
84.0	4.81	4.76	4.71	4.67	4.62	4.57	4.53	4.48	4.43	4.39
84.5	4.88	4.83	4.78	4.73	4.69	4.64	4.59	4.55	4.50	4.45
85.0	4.94	4.90	4.85	4.80	4.76	4.71	4.66	4.62	4.57	4.52

TABLE 3.—Females FVC

[80% of Predicted; Knudson 1983]

Ht.	Age										
	35	37	39	41	43	45	47	49	51	53	55
52.0	1.66	1.64	1.61	1.58	1.55	1.53	1.50	1.47	1.45	1.42	1.39
52.5	1.71	1.68	1.65	1.63	1.60	1.57	1.55	1.52	1.49	1.46	1.44
53.0	1.75	1.73	1.70	1.67	1.64	1.62	1.59	1.56	1.54	1.51	1.48
53.5	1.80	1.77	1.74	1.72	1.69	1.66	1.64	1.61	1.58	1.55	1.53
54.0	1.84	1.82	1.79	1.76	1.73	1.71	1.68	1.65	1.63	1.60	1.57
54.5	1.89	1.86	1.83	1.81	1.78	1.75	1.73	1.70	1.67	1.64	1.62
55.0	1.93	1.91	1.88	1.85	1.83	1.80	1.77	1.74	1.72	1.69	1.66
55.5	1.98	1.95	1.92	1.90	1.87	1.84	1.82	1.79	1.76	1.73	1.71
56.0	2.02	2.00	1.97	1.94	1.92	1.89	1.86	1.83	1.81	1.78	1.75
56.5	2.07	2.04	2.01	1.99	1.96	1.93	1.91	1.88	1.85	1.83	1.80
57.0	2.11	2.09	2.06	2.03	2.01	1.98	1.95	1.92	1.90	1.87	1.84
57.5	2.16	2.13	2.10	2.08	2.05	2.02	2.00	1.97	1.94	1.92	1.89
58.0	2.20	2.18	2.15	2.12	2.10	2.07	2.04	2.01	1.99	1.96	1.93
58.5	2.25	2.22	2.18	2.16	2.14	2.11	2.09	2.06	2.03	2.01	1.98
59.0	2.29	2.27	2.24	2.21	2.19	2.16	2.13	2.10	2.08	2.05	2.02
59.5	2.34	2.31	2.29	2.26	2.23	2.20	2.18	2.15	2.12	2.10	2.07
60.0	2.38	2.36	2.33	2.30	2.28	2.25	2.22	2.20	2.17	2.14	2.11
60.5	2.43	2.40	2.38	2.35	2.32	2.29	2.27	2.24	2.21	2.19	2.16
61.0	2.47	2.45	2.42	2.39	2.37	2.34	2.31	2.29	2.26	2.23	2.20
61.5	2.52	2.49	2.47	2.44	2.41	2.38	2.36	2.33	2.30	2.28	2.25
62.0	2.56	2.54	2.51	2.48	2.46	2.43	2.40	2.38	2.35	2.32	2.29
62.5	2.61	2.58	2.56	2.53	2.50	2.47	2.45	2.42	2.39	2.37	2.34

TABLE 3.—Females FVC—Continued

[80% of Predicted; Knudson 1983]

Ht.	Age										
	35	37	39	41	43	45	47	49	51	53	55
63.0	2.65	2.63	2.60	2.57	2.55	2.52	2.49	2.47	2.44	2.41	2.38
63.5	2.70	2.67	2.65	2.62	2.59	2.56	2.54	2.51	2.48	2.46	2.43
64.0	2.75	2.72	2.69	2.66	2.64	2.61	2.58	2.56	2.53	2.50	2.47
64.5	2.79	2.76	2.74	2.71	2.68	2.66	2.63	2.60	2.57	2.55	2.52
65.0	2.84	2.81	2.78	2.75	2.73	2.70	2.67	2.65	2.62	2.59	2.56
65.5	2.88	2.85	2.83	2.80	2.77	2.75	2.72	2.69	2.66	2.64	2.61
66.0	2.93	2.90	2.87	2.84	2.82	2.79	2.76	2.74	2.71	2.68	2.66
66.5	2.97	2.94	2.92	2.89	2.86	2.84	2.81	2.78	2.75	2.73	2.70
67.0	3.02	2.99	2.96	2.93	2.91	2.88	2.85	2.83	2.80	2.77	2.75
67.5	3.06	3.03	3.01	2.98	2.95	2.93	2.90	2.87	2.84	2.82	2.79
68.0	3.11	3.08	3.05	3.02	3.00	2.97	2.94	2.92	2.89	2.86	2.84
68.5	3.15	3.12	3.10	3.07	3.04	3.02	2.99	2.96	2.93	2.91	2.88
69.0	3.20	3.17	3.14	3.12	3.09	3.06	3.03	3.01	2.98	2.95	2.93
69.5	3.24	3.21	3.19	3.16	3.13	3.11	3.08	3.05	3.03	3.00	2.97
70.0	3.29	3.26	3.23	3.21	3.18	3.15	3.12	3.10	3.07	3.04	3.02
70.5	3.33	3.30	3.28	3.25	3.22	3.20	3.17	3.14	3.12	3.09	3.06
71.0	3.38	3.35	3.32	3.30	3.27	3.24	3.21	3.19	3.16	3.13	3.11
71.5	3.42	3.39	3.37	3.34	3.31	3.29	3.26	3.23	3.21	3.18	3.15
72.0	3.47	3.44	3.41	3.39	3.36	3.33	3.30	3.28	3.25	3.22	3.20
72.5	3.51	3.49	3.46	3.43	3.40	3.38	3.35	3.32	3.30	3.27	3.24
73.0	3.56	3.53	3.50	3.48	3.45	3.42	3.39	3.37	3.34	3.31	3.29
73.5	3.60	3.58	3.55	3.52	3.49	3.47	3.44	3.41	3.39	3.36	3.33
74.0	3.65	3.62	3.59	3.57	3.54	3.51	3.49	3.46	3.43	3.40	3.38
74.5	3.69	3.67	3.64	3.61	3.58	3.56	3.53	3.50	3.48	3.45	3.42
75.0	3.74	3.71	3.68	3.66	3.63	3.60	3.58	3.55	3.52	3.49	3.47
75.5	3.78	3.76	3.73	3.70	3.67	3.65	3.62	3.59	3.57	3.54	3.51
76.0	3.83	3.80	3.77	3.75	3.72	3.69	3.67	3.64	3.61	3.58	3.56
76.5	3.87	3.85	3.82	3.79	3.76	3.74	3.71	3.68	3.66	3.63	3.60
77.0	3.92	3.89	3.86	3.84	3.81	3.78	3.76	3.73	3.70	3.67	3.65
77.5	3.96	3.94	3.91	3.88	3.85	3.83	3.80	3.77	3.75	3.72	3.69
78.0	4.01	3.98	3.95	3.93	3.90	3.87	3.85	3.82	3.79	3.76	3.74
78.5	4.05	4.03	4.00	3.97	3.95	3.92	3.89	3.86	3.84	3.81	3.78
79.0	4.10	4.07	4.04	4.02	3.99	3.96	3.94	3.91	3.88	3.86	3.83
79.5	4.14	4.12	4.09	4.06	4.04	4.01	3.98	3.95	3.93	3.90	3.87
80.0	4.19	4.16	4.13	4.11	4.08	4.05	4.03	4.00	3.97	3.95	3.92
80.5	4.23	4.21	4.18	4.15	4.13	4.10	4.07	4.04	4.02	3.99	3.96
81.0	4.28	4.25	4.22	4.20	4.17	4.14	4.12	4.09	4.06	4.04	4.01

TABLE 3A.—FEMALES FVC

[80% of Predicted; Knudson 1983]

Ht.	Age									
	57	59	61	63	65	67	69	71	73	75
52.0	1.37	1.34	1.31	1.28	1.26	1.23	1.20	1.47	1.43	1.38
52.5	1.41	1.38	1.36	1.33	1.30	1.27	1.25	1.51	1.46	1.41
53.0	1.46	1.43	1.40	1.37	1.35	1.32	1.29	1.54	1.49	1.44
53.5	1.50	1.47	1.45	1.42	1.39	1.37	1.34	1.57	1.52	1.48
54.0	1.55	1.52	1.49	1.46	1.44	1.41	1.38	1.60	1.55	1.51
54.5	1.59	1.56	1.54	1.51	1.48	1.46	1.43	1.63	1.59	1.54
55.0	1.64	1.61	1.58	1.55	1.53	1.50	1.47	1.67	1.62	1.57
55.5	1.68	1.65	1.63	1.60	1.57	1.55	1.52	1.70	1.65	1.60
56.0	1.73	1.70	1.67	1.64	1.62	1.59	1.56	1.73	1.68	1.63
56.5	1.77	1.74	1.72	1.69	1.66	1.64	1.61	1.76	1.71	1.67
57.0	1.82	1.79	1.76	1.74	1.71	1.68	1.65	1.79	1.75	1.70
57.5	1.86	1.83	1.81	1.78	1.75	1.73	1.70	1.82	1.78	1.73
58.0	1.91	1.88	1.85	1.83	1.80	1.77	1.74	1.86	1.81	1.76
58.5	1.95	1.92	1.90	1.87	1.84	1.82	1.79	1.89	1.84	1.79
59.0	2.00	1.97	1.94	1.92	1.89	1.86	1.83	1.92	1.87	1.83
59.5	2.04	2.01	1.99	1.96	1.93	1.91	1.88	1.95	1.90	1.86
60.0	2.09	2.06	2.03	2.01	1.98	1.95	1.92	1.98	1.94	1.89
60.5	2.13	2.10	2.08	2.05	2.02	2.00	1.97	2.02	1.97	1.92
61.0	2.18	2.15	2.12	2.10	2.07	2.04	2.01	2.05	2.00	1.95
61.5	2.22	2.20	2.17	2.14	2.11	2.09	2.06	2.08	2.03	1.98
62.0	2.27	2.24	2.21	2.19	2.16	2.13	2.11	2.11	2.06	2.02
62.5	2.31	2.29	2.26	2.23	2.20	2.18	2.15	2.14	2.10	2.05
63.0	2.36	2.33	2.30	2.28	2.25	2.22	2.20	2.17	2.13	2.08

TABLE 3A.—FEMALES FVC—Continued

[80% of Predicted; Knudson 1983]

Ht.	Age									
	57	59	61	63	65	67	69	71	73	75
63.5	2.40	2.38	2.35	2.32	2.29	2.27	2.24	2.21	2.16	2.11
64.0	2.45	2.42	2.39	2.37	2.34	2.31	2.29	2.24	2.19	2.14
64.5	2.49	2.47	2.44	2.41	2.38	2.36	2.33	2.27	2.22	2.18
65.0	2.54	2.51	2.48	2.46	2.43	2.40	2.38	2.30	2.25	2.21
65.5	2.58	2.56	2.53	2.50	2.47	2.45	2.42	2.33	2.29	2.24
66.0	2.63	2.60	2.57	2.55	2.52	2.49	2.47	2.37	2.32	2.27
66.5	2.67	2.65	2.62	2.59	2.57	2.54	2.51	2.40	2.35	2.30
67.0	2.72	2.69	2.66	2.64	2.61	2.58	2.56	2.43	2.38	2.33
67.5	2.76	2.74	2.71	2.68	2.66	2.63	2.60	2.46	2.41	2.37
68.0	2.81	2.78	2.75	2.73	2.70	2.67	2.65	2.49	2.45	2.40
68.5	2.85	2.83	2.80	2.77	2.75	2.72	2.69	2.52	2.48	2.43
69.0	2.90	2.87	2.84	2.82	2.79	2.76	2.74	2.56	2.51	2.46
69.5	2.94	2.92	2.89	2.86	2.84	2.81	2.78	2.59	2.54	2.49
70.0	2.99	2.96	2.93	2.91	2.88	2.85	2.83	2.62	2.57	2.52
70.5	3.03	3.01	2.98	2.95	2.93	2.90	2.87	2.65	2.60	2.56
71.0	3.08	3.05	3.03	3.00	2.97	2.94	2.92	2.68	2.64	2.59
71.5	3.12	3.10	3.07	3.04	3.02	2.99	2.96	2.72	2.67	2.62
72.0	3.17	3.14	3.12	3.09	3.06	3.03	3.01	2.75	2.70	2.65
72.5	3.21	3.19	3.16	3.13	3.11	3.08	3.05	2.78	2.73	2.68
73.0	3.26	3.23	3.21	3.18	3.15	3.12	3.10	2.81	2.76	2.72
73.5	3.30	3.28	3.25	3.22	3.20	3.17	3.14	2.84	2.79	2.75
74.0	3.35	3.32	3.30	3.27	3.24	3.21	3.19	2.87	2.83	2.78
74.5	3.40	3.37	3.34	3.31	3.29	3.26	3.23	2.91	2.86	2.81
75.0	3.44	3.41	3.39	3.36	3.33	3.30	3.28	2.94	2.89	2.84
75.5	3.49	3.46	3.43	3.40	3.38	3.35	3.32	2.97	2.92	2.87
76.0	3.53	3.50	3.48	3.45	3.42	3.40	3.37	3.00	2.95	2.91
76.5	3.58	3.55	3.52	3.49	3.47	3.44	3.41	3.03	2.99	2.94
77.0	3.62	3.59	3.57	3.54	3.51	3.49	3.46	3.06	3.02	2.97
77.5	3.67	3.64	3.61	3.58	3.56	3.53	3.50	3.10	3.05	3.00
78.0	3.71	3.68	3.66	3.63	3.60	3.58	3.55	3.13	3.08	3.03
78.5	3.76	3.73	3.70	3.67	3.65	3.62	3.59	3.16	3.11	3.07
79.0	3.80	3.77	3.75	3.72	3.69	3.67	3.64	3.19	3.14	3.10
79.5	3.85	3.82	3.79	3.77	3.74	3.71	3.68	3.22	3.18	3.13
80.0	3.89	3.86	3.84	3.81	3.78	3.76	3.73	3.26	3.21	3.16
80.5	3.94	3.91	3.88	3.86	3.83	3.80	3.77	3.29	3.24	3.19
81.0	3.98	3.95	3.93	3.90	3.87	3.85	3.82	3.32	3.27	3.22

TABLE 4.—FEMALES FEV1

[80% of Predicted; Knudson 1983]

Ht.	Age										
	35	37	39	41	43	45	47	49	51	53	55
52.0	1.52	1.49	1.46	1.43	1.40	1.37	1.34	1.31	1.28	1.25	1.22
52.5	1.55	1.52	1.49	1.46	1.43	1.40	1.37	1.34	1.31	1.28	1.25
53.0	1.59	1.56	1.53	1.50	1.47	1.43	1.40	1.37	1.34	1.31	1.28
53.5	1.62	1.59	1.56	1.53	1.50	1.47	1.44	1.41	1.38	1.35	1.32
54.0	1.65	1.62	1.59	1.56	1.53	1.50	1.47	1.44	1.41	1.38	1.35
54.5	1.69	1.66	1.63	1.60	1.57	1.54	1.51	1.48	1.44	1.41	1.38
55.0	1.72	1.69	1.66	1.63	1.60	1.57	1.54	1.51	1.48	1.45	1.42
55.5	1.76	1.72	1.69	1.66	1.63	1.60	1.57	1.54	1.51	1.48	1.45
56.0	1.79	1.76	1.73	1.70	1.67	1.64	1.61	1.58	1.55	1.52	1.49
56.5	1.82	1.79	1.76	1.73	1.70	1.67	1.64	1.61	1.58	1.55	1.52
57.0	1.86	1.83	1.80	1.77	1.73	1.70	1.67	1.64	1.61	1.58	1.55
57.5	1.89	1.86	1.83	1.80	1.77	1.74	1.71	1.68	1.65	1.62	1.59
58.0	1.92	1.89	1.86	1.83	1.80	1.77	1.74	1.71	1.68	1.65	1.62
58.5	1.96	1.93	1.90	1.87	1.84	1.81	1.78	1.74	1.71	1.68	1.65
59.0	1.99	1.96	1.93	1.90	1.87	1.84	1.81	1.78	1.75	1.72	1.69
59.5	2.03	1.99	1.96	1.93	1.90	1.87	1.84	1.81	1.78	1.75	1.72
60.0	2.06	2.03	2.00	1.97	1.94	1.91	1.88	1.85	1.82	1.79	1.75
60.5	2.09	2.06	2.03	2.00	1.97	1.94	1.91	1.88	1.85	1.82	1.79
61.0	2.13	2.10	2.07	2.04	2.00	1.97	1.94	1.91	1.88	1.85	1.82
61.5	2.16	2.13	2.10	2.07	2.04	2.01	1.98	1.95	1.92	1.89	1.86
62.0	2.19	2.16	2.13	2.10	2.07	2.04	2.01	1.98	1.95	1.92	1.89
62.5	2.23	2.20	2.17	2.14	2.11	2.08	2.05	2.01	1.98	1.95	1.92
63.0	2.26	2.23	2.20	2.17	2.14	2.11	2.08	2.05	2.02	1.99	1.96
63.5	2.30	2.26	2.23	2.20	2.17	2.14	2.11	2.08	2.05	2.02	1.99

TABLE 4.—FEMALES FEV1—Continued

[80% of Predicted; Knudson 1983]

Ht.	Age										
	35	37	39	41	43	45	47	49	51	53	55
64.0	2.33	2.30	2.27	2.24	2.21	2.18	2.15	2.12	2.09	2.06	2.02
64.5	2.36	2.33	2.30	2.27	2.24	2.21	2.18	2.15	2.12	2.09	2.06
65.0	2.40	2.37	2.34	2.31	2.27	2.24	2.21	2.18	2.15	2.12	2.09
65.5	2.43	2.40	2.37	2.34	2.31	2.28	2.25	2.22	2.19	2.16	2.13
66.0	2.46	2.43	2.40	2.37	2.34	2.31	2.28	2.25	2.22	2.19	2.16
66.5	2.50	2.47	2.44	2.41	2.38	2.35	2.32	2.28	2.25	2.22	2.19
67.0	2.53	2.50	2.47	2.44	2.41	2.38	2.35	2.32	2.29	2.26	2.23
67.5	2.56	2.53	2.50	2.47	2.44	2.41	2.38	2.35	2.32	2.29	2.26
68.0	2.60	2.57	2.54	2.51	2.48	2.45	2.42	2.39	2.36	2.33	2.29
68.5	2.63	2.60	2.57	2.54	2.51	2.48	2.45	2.42	2.39	2.36	2.33
69.0	2.67	2.64	2.61	2.57	2.54	2.51	2.48	2.45	2.42	2.39	2.36
69.5	2.70	2.67	2.64	2.61	2.58	2.55	2.52	2.49	2.46	2.43	2.40
70.0	2.73	2.70	2.67	2.64	2.61	2.58	2.55	2.52	2.49	2.46	2.43
70.5	2.77	2.74	2.71	2.68	2.65	2.62	2.58	2.55	2.52	2.49	2.46
71.0	2.80	2.77	2.74	2.71	2.68	2.65	2.62	2.59	2.56	2.53	2.50
71.5	2.83	2.80	2.77	2.74	2.71	2.68	2.65	2.62	2.59	2.56	2.53
72.0	2.87	2.84	2.81	2.78	2.75	2.72	2.69	2.66	2.63	2.59	2.56
72.5	2.90	2.87	2.84	2.81	2.78	2.75	2.72	2.69	2.66	2.63	2.60
73.0	2.94	2.91	2.88	2.84	2.81	2.78	2.75	2.72	2.69	2.66	2.63
73.5	2.97	2.94	2.91	2.88	2.85	2.82	2.79	2.76	2.73	2.70	2.67
74.0	3.00	2.97	2.94	2.91	2.88	2.85	2.82	2.79	2.76	2.73	2.70
74.5	3.04	3.01	2.98	2.95	2.92	2.89	2.85	2.82	2.79	2.76	2.73
75.0	3.07	3.04	3.01	2.98	2.95	2.92	2.89	2.86	2.83	2.80	2.77
75.5	3.10	3.07	3.04	3.01	2.98	2.95	2.92	2.89	2.86	2.83	2.80
76.0	3.14	3.11	3.08	3.05	3.02	2.99	2.96	2.93	2.90	2.86	2.83
76.5	3.17	3.14	3.11	3.08	3.05	3.02	2.99	2.96	2.93	2.90	2.87
77.0	3.21	3.18	3.15	3.11	3.08	3.05	3.02	2.99	2.96	2.93	2.90
77.5	3.24	3.21	3.18	3.15	3.12	3.09	3.06	3.03	3.00	2.97	2.94
78.0	3.27	3.24	3.21	3.18	3.15	3.12	3.09	3.06	3.03	3.00	2.97
78.5	3.31	3.28	3.25	3.22	3.19	3.15	3.12	3.09	3.06	3.03	3.00
79.0	3.34	3.31	3.28	3.25	3.22	3.19	3.16	3.13	3.10	3.07	3.04
79.5	3.37	3.34	3.31	3.28	3.25	3.22	3.19	3.16	3.13	3.10	3.07
80.0	3.41	3.38	3.35	3.32	3.29	3.26	3.23	3.20	3.16	3.13	3.10
80.5	3.44	3.41	3.38	3.35	3.32	3.29	3.26	3.23	3.20	3.17	3.14
81.0	3.48	3.45	3.41	3.38	3.35	3.32	3.29	3.26	3.23	3.20	3.17

TABLE 4A.—FEMALES FEV1

[80% of Predicted; Knudson 1983]

Ht.	Age									
	57	59	61	63	65	67	69	71	73	75
52.0	1.18	1.15	1.12	1.09	1.06	1.03	1.00	1.38	1.32	1.25
52.5	1.22	1.19	1.16	1.13	1.10	1.07	1.04	1.39	1.33	1.27
53.0	1.25	1.22	1.19	1.16	1.13	1.10	1.07	1.41	1.34	1.28
53.5	1.29	1.26	1.23	1.19	1.16	1.13	1.10	1.42	1.36	1.30
54.0	1.32	1.29	1.26	1.23	1.20	1.17	1.14	1.44	1.37	1.31
54.5	1.35	1.32	1.29	1.26	1.23	1.20	1.17	1.45	1.39	1.32
55.0	1.39	1.36	1.33	1.30	1.27	1.24	1.20	1.47	1.40	1.34
55.5	1.42	1.39	1.36	1.33	1.30	1.27	1.24	1.48	1.42	1.35
56.0	1.45	1.42	1.39	1.36	1.33	1.30	1.27	1.50	1.43	1.37
56.5	1.49	1.46	1.43	1.40	1.37	1.34	1.31	1.51	1.45	1.38
57.0	1.52	1.49	1.46	1.43	1.40	1.37	1.34	1.52	1.46	1.40
57.5	1.56	1.53	1.50	1.46	1.43	1.40	1.37	1.54	1.48	1.41
58.0	1.59	1.56	1.53	1.50	1.47	1.44	1.41	1.55	1.49	1.43
58.5	1.62	1.59	1.56	1.53	1.50	1.47	1.44	1.57	1.50	1.44
59.0	1.66	1.63	1.60	1.57	1.54	1.51	1.47	1.58	1.52	1.46
59.5	1.69	1.66	1.63	1.60	1.57	1.54	1.51	1.60	1.53	1.47
60.0	1.72	1.69	1.66	1.63	1.60	1.57	1.54	1.61	1.55	1.48
60.5	1.76	1.73	1.70	1.67	1.64	1.61	1.58	1.63	1.56	1.50
61.0	1.79	1.76	1.73	1.70	1.67	1.64	1.61	1.64	1.58	1.51
61.5	1.83	1.80	1.76	1.73	1.70	1.67	1.64	1.66	1.59	1.53
62.0	1.86	1.83	1.80	1.77	1.74	1.71	1.68	1.67	1.61	1.54
62.5	1.89	1.86	1.83	1.80	1.77	1.74	1.71	1.68	1.62	1.56
63.0	1.93	1.90	1.87	1.84	1.81	1.77	1.74	1.70	1.64	1.57
63.5	1.96	1.93	1.90	1.87	1.84	1.81	1.78	1.71	1.65	1.59
64.0	1.99	1.96	1.93	1.90	1.87	1.84	1.81	1.73	1.66	1.60

TABLE 4A.—FEMALES FEV1—Continued

[80% of Predicted; Knudson 1983]

Ht.	Age									
	57	59	61	63	65	67	69	71	73	75
64.5	2.03	2.00	1.97	1.94	1.91	1.88	1.85	1.74	1.68	1.62
65.0	2.06	2.03	2.00	1.97	1.94	1.91	1.88	1.76	1.69	1.63
65.5	2.10	2.07	2.03	2.00	1.97	1.94	1.91	1.77	1.71	1.64
66.0	2.13	2.10	2.07	2.04	2.01	1.98	1.95	1.79	1.72	1.66
66.5	2.16	2.13	2.10	2.07	2.04	2.01	1.98	1.80	1.74	1.67
67.0	2.20	2.17	2.14	2.11	2.08	2.04	2.01	1.82	1.75	1.69
67.5	2.23	2.20	2.17	2.14	2.11	2.08	2.05	1.83	1.77	1.70
68.0	2.26	2.23	2.20	2.17	2.14	2.11	2.08	1.84	1.78	1.72
68.5	2.30	2.27	2.24	2.21	2.18	2.15	2.12	1.86	1.80	1.73
69.0	2.33	2.30	2.27	2.24	2.21	2.18	2.15	1.87	1.81	1.75
69.5	2.37	2.34	2.30	2.27	2.24	2.21	2.18	1.89	1.82	1.76
70.0	2.40	2.37	2.34	2.31	2.28	2.25	2.22	1.90	1.84	1.78
70.5	2.43	2.40	2.37	2.34	2.31	2.28	2.25	1.92	1.85	1.79
71.0	2.47	2.44	2.41	2.38	2.35	2.31	2.28	1.93	1.87	1.80
71.5	2.50	2.47	2.44	2.41	2.38	2.35	2.32	1.95	1.88	1.82
72.0	2.53	2.50	2.47	2.44	2.41	2.38	2.35	1.96	1.90	1.83
72.5	2.57	2.54	2.51	2.48	2.45	2.42	2.39	1.97	1.91	1.85
73.0	2.60	2.57	2.54	2.51	2.48	2.45	2.42	1.99	1.93	1.86
73.5	2.64	2.60	2.57	2.54	2.51	2.48	2.45	2.00	1.94	1.88
74.0	2.67	2.64	2.61	2.58	2.55	2.52	2.49	2.02	1.95	1.89
74.5	2.70	2.67	2.64	2.61	2.58	2.55	2.52	2.03	1.97	1.91
75.0	2.74	2.71	2.68	2.65	2.61	2.58	2.55	2.05	1.98	1.92
75.5	2.77	2.74	2.71	2.68	2.65	2.62	2.59	2.06	2.00	1.93
76.0	2.80	2.77	2.74	2.71	2.68	2.65	2.62	2.08	2.01	1.95
76.5	2.84	2.81	2.78	2.75	2.72	2.69	2.66	2.09	2.03	1.96
77.0	2.87	2.84	2.81	2.78	2.75	2.72	2.69	2.11	2.04	1.98
77.5	2.91	2.87	2.84	2.81	2.78	2.75	2.72	2.12	2.06	1.99
78.0	2.94	2.91	2.88	2.85	2.82	2.79	2.76	2.13	2.07	2.01
78.5	2.97	2.94	2.91	2.88	2.85	2.82	2.79	2.15	2.09	2.02
79.0	3.01	2.98	2.95	2.92	2.88	2.85	2.82	2.16	2.10	2.04
79.5	3.04	3.01	2.98	2.95	2.92	2.89	2.86	2.18	2.11	2.05
80.0	3.07	3.04	3.01	2.98	2.95	2.92	2.89	2.19	2.13	2.07
80.5	3.11	3.08	3.05	3.02	2.99	2.96	2.93	2.21	2.14	2.08
81.0	3.14	3.11	3.08	3.05	3.02	2.99	2.96	2.22	2.16	2.09

Dated: March 11, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–6524 Filed 3–19–99; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Safety and Health Standards

CFR Correction

In Title 29 of the Code of Federal Regulations, parts 1910.1000 to End, revised as of July 1, 1998, § 1910.1052 is corrected by removing the second paragraph (g) appearing on pages 436 and 437.

[FR Doc. 99–55510 Filed 3–19–99; 8:45 am]

BILLING CODE 1505–01–D

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–49

[FPMR Amdt. H–202]

RIN 3090–AG97

Change in Consumer Price Index Minimal Value

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: Pub. L. 95–105 requires that at 3-year intervals following January 1, 1981, minimal value be redefined by the Administrator of General Services, after consultation with the Secretary of State, to reflect changes in the Consumer Price Index for the immediately preceding 3-year period. The required consultation has been completed and the minimal value has been increased to mean $260 or less as of January 1, 1999.

EFFECTIVE DATE: This final rule is effective January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Martha Caswell, Director, Personal Property Management Policy Division (202–501–3846).

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

The General Services Administration (GSA) has determined that this is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

B. Regulatory Flexibility Act

This rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501–3520.

D. Small Business Regulatory Enforcement Reform Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of subjects in 41 CFR part 101–49

Government property management, Excess government property.

For the reasons set forth in the preamble, 41 CFR part 101–49 is amended as follows:

PART 101–49—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

1. The authority citation for part 101–49 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 515, 91 Stat. 862 (5 U.S.C. 7342).

2. Section 101–49.001–5 is amended by revising the introductory text to read as follows:

§ 101–49.001–5 Minimal value.

Minimal value means a retail value in the United States at the time of acceptance of $260 or less, except that:

* * * * *

Dated: March 15, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–6936 Filed 3–19–99; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 96–128; FCC 99–7]

Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission

ACTION: Final rule; Petition for Reconsideration.

SUMMARY: This order implements pay phone compensation provisions of section 276 of the Telecommications Act of 1996. This Order responds to an order of the U.S. Court of Appeals for the DC. Circuit, which remanded certain compensation rules adopted by the Federal Communications Commission in the Second Report Order in CC Docket No. 96–128, FCC No. 97–371, 62 FR 58659 (October 30, 1997). This Order reduces from $.284 to $.240 the default per-call compensation that is owed by long distance carriers to pay phone providers for compensable calls originating from pay phones. This Order also addresses other issues relating to the Commission's rules implementing the pay phone provisions of the Telecommunications Act of 1996.

DATES: Effective April 21, 1999.

FOR FURTHER INFORMATION CONTACT: Glenn Reynolds, Enforcement Division, Common Carrier Bureau. (202) 418–0960.

SUPPLEMENTARY INFORMATION:

This is a summary of the Commission's Third Report and Order and Order on Reconsideration of the Second Report and Order (Third Report and Order) in CC Docket No. 96–128, adopted on January 28, 1999, and released on February 4, 1999. The full text of the Third Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, NW, Washington DC. The complete text of this decision may also be downloaded from the FCC's website, www.fcc.gov. The complete text may be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street NW, Washington DC. 20036, (202) 857–3800.

I. Introduction

1. In this proceeding, we continue our efforts to implement the requirements of section 276 of the Telecommunications Act of 1996 (''the 1996 Act''). Section 276 directs us to promulgate regulations that will achieve three basic policy objectives with respect to the provision of payphone services: (1) promoting a competitive payphone market; (2) ensuring the widespread deployment of payphones for the benefit of the general public; and (3) ensuring that providers of payphone services receive fair compensation for every call made using their payphones. The overarching goals of the 1996 Act further instruct us to establish these regulations in a pro-competitive, deregulatory framework that will open up telecommunications services to competitive forces nationwide. In this Order, we also respond specifically to issues remanded to us by the Court upon its review of the Commission's previous order.

A. The Commission's Prior Orders

2. In the prior orders in this proceeding, the Commission has fulfilled much of the congressional mandate embodied in section 276 by creating the structural groundwork necessary for competition to flourish in the provision of payphone services. *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96–128, Notice of Proposed Rulemaking, 61 FR 31481 (June 20, 1996) (*NPRM*); Report and Order, 61 FR 52307 (October 7, 1996) (*First Report and Order*); Order on Reconsideration, 61 FR 65341 (December 12, 1996) (*First Report and Order on Reconsideration*) (together the *First Report and Order* and the *First Report and Order on Reconsideration* are referred to as the *Payphone Orders*). The *Payphone Orders* were affirmed in part and vacated in part. *See Illinois Public Telecomm. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997) (*Illinois Public Telecomm.*). The Commission addressed the issues remanded by *Illinois Public Telecomm.* in the Second Report and Order, 62 FR 58659 (October 30, 1997) (*Second Report and Order*). The Second Report and Order was also appealed. On appeal, the Court remanded certain issues to the Commission. *See MCI Telecomm. Corp. et al. v. FCC*, 143 F.3d 606 (D.C. Cir. 1998) (*MCI v. FCC*). In addition to responding to those issues remanded by the Court, this Order also addresses issues raised by parties that petitioned us to reconsider various decisions made in the Second Report and Order.

3. Specifically, the Commission has eliminated implicit subsidies to payphones provided by local exchange carriers (LECs) that gave such companies an unfair competitive advantage compared to non-LEC payphone providers. Similarly, the Commission established non-structural safeguards to prevent Bell Operating Companies (BOCs) from discriminating in favor of their own payphones in the provision of local service, as well as other measures designed to place all providers of payphone services on an equal competitive footing. The Commission also deregulated the local coin rate for payphone calls to allow the competitive marketplace to set fair compensation for such calls. None of these actions is implicated by the steps we take in the instant order.

4. The Commission has adopted two prior orders aimed at balancing the policy objectives identified above. In these prior orders, the Commission gave primary importance to Congress's objective of establishing a market-based, deregulatory mechanism for payphone compensation, as required both in section 276 and the generally pro-competitive goals of the 1996 Act. The Commission recognized, however, that various statutory, technological, and economic factors inhibited the development of a fully deregulated means of providing fair compensation

for certain types of calls broadly referred to as ''dial-around'' calls for which payphone owners were largely uncompensated prior to the 1996 Act. Indeed, the Telephone Operator Consumer Services Improvement Act (TOCSIA) limits the ability of payphone service providers (PSPs) to negotiate with interexchange carriers (IXCs) fair compensation for dial-around calls. Unlike other aspects of payphone service, such as the local coin rate, the Commission accordingly found it necessary to adopt a more regulatory approach to ensuring that PSPs are fairly compensated for these types of calls.

5. By way of explanation, there are typically three types of calls made from payphones: local calls; long distance calls using the long distance carrier selected by the payphone owner (referred to as the ''presubscribed carrier''); and so-called ''dial-around'' calls, where the caller makes a long distance call using a long distance carrier other than the payphone's presubscribed long distance carrier.

6. Payphone owners receive direct payment for providing the first two categories of calls. For example, a caller making a local call deposits coins (typically $.35) and is connected to the called party. That $.35 is paid directly to the payphone owner. A caller making long distance calls using the payphone's presubscribed long distance carrier dials the long distance number, and the payphone owner typically receives payment through its presubscribed carrier.

7. The third category, referred to as ''dial-around'' calls, consists of long distance calls that utilize a long distance carrier other than the payphone's presubscribed carrier. Generally, there are two types of dial-around calls. The first type is where a caller uses a code to access his preferred long distance carrier to make a long distance call, e.g., ''1/800/CALL–AT&T'' or ''10–10–321.'' The second type of dial-around calls are known as ''toll-free'' calls, such as 1/800–FLOWERS. In this type of call, the flower company will pay (or ''subscribes'' to) a long distance carrier for a toll-free number that its customers can use to make long distance calls to the company. Similar to the caller who uses 1/800–CALL–ATT, the flower customer calling from a payphone is making a long distance call using a carrier other than the payphone's presubscribed long distance carrier. This Order addresses the question of how payphone owners should be compensated for ''dial around'' calls made from their payphones.

8. In its prior two orders, the Commission established a phased-in compensation mechanism to satisfy the statutory mandate to ensure that payphone owners are ''fairly'' compensated for these dial-around calls. The first phase of the compensation mechanism established a specific, per-call default compensation amount to be paid to a PSP to cover the cost of an access-code call or toll-free subscriber call in the absence of a negotiated agreement between the PSP and the carrier handling the call. In the Second Report and Order, the Commission calculated this default amount using what might be described as a ''top-down'' approach. That is, the Commission used the typical deregulated coin rate of $.35 as a starting point and subtracted net avoided cost differences between the provision of these coin calls and the provision of ''dial-around'' or compensable calls. The second phase used the same ''top-down'' methodology to determine a default amount but allowed the ''starting point'' to vary with the deregulated coin price at each individual payphone.

9. As detailed below, both of the Commission's orders establishing a mechanism for setting ''fair compensation'' for access code and toll-free calls were appealed. While upholding most of the other market-opening undertakings described above, the Court in both instances found fault with the Commission's efforts to tie ''fair compensation'' for these dial-around or compensable calls to the deregulated prices charged by PSPs for local coin calls. In particular, the Court, in its second remand order, found that the Commission failed to adequately articulate why the price of a local call is an appropriate starting point for deriving a regulated default price for ''dial-around'' or compensable calls. The Commission's main rationale for this approach was that it could be viewed as being fair in the sense that the margin between price and incremental cost would be the same for all types of calls. Thus all types of calls could be viewed as making the same contribution to covering joint and common costs. Thus our justification for choosing $.35 as a starting point was simply that it could be viewed as producing a ''fair'' result.

B. The 1996 Act and Market Constraints

10. In this Order, we must reevaluate the appropriate means by which to achieve the basic policy objectives expressly set out in section 276. In setting a default compensation amount, the present realizing any of these goals individually will not be the optimal means of satisfying one or more of the other goals. For example, the market for payphone services is characterized by increasing competitive pressures due, in part, to the market-opening directives of our previous orders in this proceeding. Additional pressures have arisen from payphone-market substitutes, i.e., the rapidly growing availability of Personal Communications Service (PCS) and cellular technology, which provides some consumers with an economic alternative to payphones. In a competitive payphone market, these factors certainly may lead to a reduction in the deployment of payphones in some areas, particularly in low-volume locations. Moreover, the number of payphones deployed across the country is inexorably related to our determination of a fair compensation amount, as we are directed to do by Congress. Simply stated, a higher default compensation amount will lead to the deployment of more payphones, and a lower default compensation amount will lead to fewer payphones, irrespective of which rate represents ''fair compensation.'' Another example arises from the Congressional mandate that the Commission's compensation methodology be established on a ''per call'' basis. Because the overwhelming majority of a payphone's costs are fixed, a per call compensation plan results in the following anomaly: A payphone with a low number of calls, e.g., in a rural area where few calls are made from the phone, will just barely recover its costs. Under the same plan, a payphone with a high number of calls, e.g., a payphone in a busy bus station, will recover much more than its costs.

11. We place great weight on Congress's directive to ensure that payphones remain widely deployed and available to the public at large, in part, because we believe that, if we fail to adequately compensate payphone owners for dial-around or compensable calls, the first payphones likely to be eliminated are those payphones located where consumers have the fewest real alternatives, such as in rural areas that generate relatively fewer payphone calls and inner-city areas with low residential subscription rates. We also give primary importance to Congress's objective of widespread deployment because the public benefits from widespread deployment. Furthermore, the accomplishment of the remaining objectives necessarily flow from widespread deployment, e.g., to ensure widespread deployment, there must be fair compensation.

12. After considering the record before us and the opinions of the Court,

we conclude that the existing statutory, technological, and economic constraints identified in the Commission's prior orders prevent us at this time from relying upon deregulation to determine fair compensation for access-code and toll-free subscriber calls. Nothing in the record before us persuades us that we should reconsider our characterization of the competitiveness of the payphone market in the *First Report and Order*.

13. In contrast to the provision of local coin call service, however, the provision of access-code and toll-free call service is subject to statutory and technological restrictions that presently inhibit the ability of the parties to the transaction to reach a mutually agreeable price, or, alternatively, to decline to transact. In particular, Congress previously mandated in section 226 of the Act that PSPs must provide to consumers using their payphones access to all IXCs. As a result, PSPs have minimal leverage to negotiate with these IXCs for a fair compensation amount for delivering calls to the IXCs' networks. Indeed, this concern was one of the fundamental reasons why Congress adopted the compensation provisions of section 276. In its previous orders, the Commission sought to overcome this lack of bargaining power by establishing a system where the IXC could choose to ''block,'' or not accept, calls if it determined that the price being demanded by the PSP was more than the IXC was willing to pay. We conclude in this Order, however, that the present ability of carriers to block is not sufficiently developed to ensure that allowing the default rate to float with the PSP's local coin rate will necessarily result in a compensation level that is ''fair,'' as contemplated by the statute.

C. Summary of Our Actions in this Order

14. In this Order, we switch from the top-down methodology of our prior orders to a ''bottom-up'' methodology to establish the default per-call compensation amount that shall be paid to PSPs for compensable calls that are not otherwise compensated. We refer to the compensation amount as a ''default amount'' to emphasize that it applies only in the absence of some other price that may be negotiated between the payphone owner and the carrier. Pursuant to the bottom-up methodology adopted in this Order, we calculate an average fully distributed cost for each type of call such that the default price for each type of call is set equal to the fully distributed cost of that type of call. We call this a ''bottom-up'' approach to connote the idea that the price of dial-around or compensable calls is calculated by ''building-up'' from a starting point of zero using costs, instead of ''building-down'' from a starting point of the price of coin calls using avoided costs. In our explanation of the shift to a bottom-up methodology, we respond to the concerns of the Court in MCI v. FCC, which remanded the Commission's Second Report and Order.

15. We adjust the default per-call compensation amount for dial-around or compensable calls from $.284 to $.24. We make this adjustment both as a result of the new methodology we adopt and as a result of our resolution of the petitions for reconsideration of the Second Report and Order. Indeed, as detailed below, this reduction in the default amount is more the result of new, more accurate cost data submitted in connection with the petitions for reconsideration than due to the switch from a top-down to bottom-up calculation. In reaching the revised default amount, we consider the cost data submitted (1) for the Second Report and Order; (2) in connection with the petitions for reconsideration of the Second Report and Order; and (3) in response to our *Public Notice*. Also, we reconsider our treatment of the costs associated with the provision of compensable calls from payphones. The more-developed record assures us that our current calculation of a default compensation amount more accurately reflects the costs of providing payphone service than our previous efforts.

16. Because our bottom-up methodology assures fair compensation for the overwhelming majority of payphones, we conclude that the per-call compensation methodology that we adopt in this Order will not negatively affect the current deployment of payphones and thus will promote Congress's goal of widespread deployment of payphones. In particular, by using a ''marginal'' payphone location for purposes of calculating the default compensation amount, we have sought in this Order to ensure the continued deployment of existing payphones to the greatest practical extent. Furthermore, nothing in our Order affects or jeopardizes the states' ability to ensure that public interest payphone programs are viable and supported in an equitable and fair fashion. We therefore conclude that the per-call compensation methodology adopted herein is the best option available to implement section 276(b)(2) of the Act in light of existing technological, statutory, and economic constraints.

17. We believe that targeted call blocking ultimately will play a significant role in bridging the gap between Congress's and the Commission's goal of a deregulatory solution and the present state of payphone telephony. Should the parties that are the principal economic beneficiaries of the payphone market—the payphone providers, the IXCs, and the subscribers to toll-free lines—be unable or unwilling to resolve the technological issues regarding targeted call blocking, then their inaction may require us to move to a more regulatory approach. If, however, the parties are able to resolve these technological issues surrounding the availability of targeted call blocking, we believe that a move to a more market-based approach that would comply with both statutory obligations and the Court's concerns is foreseeable. We note that IXCs currently possess the technology and receive the coding digits necessary to implement a targeted call blocking mechanism.

18. Until such time, we will monitor the development of call blocking technology and act to ensure that the interests of the public as payphone users are adequately addressed. We emphasize that our finding concerning the current limitations of call blocking technology only restricts our ability to rely upon a carrier-pays system in which different payphones may charge different compensation amounts, such as would be the case in the final phase of the compensation mechanism established in the Commission's previous orders. As stated in those orders, the adoption of a fixed default compensation amount, as we do in this Order, is designed in part to address the existing technological limitations relating to call-blocking.

19. As of 30 days after publication of this Order in the **Federal Register**, IXCs must compensate PSPs the default per-call compensation amount for all compensable payphone calls not otherwise compensated pursuant to contract. For purposes of this Order, a compensable call includes toll-free calls, access-code calls, certain 0+, and certain inmate calls. The default per-call compensation amount shall be applicable through at least January 31, 2002. We anticipate that, by this time, the parties will have had the opportunity to resolve the impediments that currently inhibit the ability of payphone owners and carriers to negotiate fair compensation for dial-around calls. If, by January 31, 2002, parties have not invested the time, capital, and effort necessary to remove these technological impediments, or we determine that other impediments to a market-based resolution continue to exist, the parties may petition the

Commission regarding the default compensation amount, related issues pursuant to technological advances, and the expected resultant market changes. Barring an unforeseen change in the market or in the relevant technology, we will look with disfavor upon any petition requesting that we modify, before January 31, 2002, either the compensation amount or compensation mechanism. We find that it will require a significant amount of time for IXCs to fully implement and deploy the necessary technologies and that it is important to provide stability to the parties, the public, and the market concerning the amount of per-call compensation.

II. Discussion

A. Remand Issues

20. In this section, we respond to the Court's remand of the Commission's Second Report and Order. We explain our basis for deciding on the appropriate compensation methodology, in light of the statutory requirements of the Act, the underlying economic structure of payphone telephony, current technological constraints, and the Court's findings in MCI v. FCC.

21. We first define the scope of our compensation methodology by specifically identifying the calls that are compensable under our rules. We then explain the factors that guide our selection of a compensation methodology. Specifically, we define, for purposes of this Order, ''fair compensation'' in terms of the economic constructs of payphone telephony. Applying our definition of fair compensation within the confines of the Act's directives and the Court's findings in MCI v. FCC, we decline to adopt, for now, a top-down methodology to calculate the default compensation amount that uses the deregulated local coin rate as the starting point.

22. We then explain our return to the Commission's initial view that a bottom-up methodology should be used to establish a default compensation amount. We explain our finding that a bottom-up methodology is currently the most equitable means of ensuring fair compensation for PSPs in light of the very real statutory, technological, and economic constraints within which we must make our decision. We emphasize again that our preference would be to rely on a fully deregulated solution for setting compensation for coinless payphone calls. As we explain, however, we conclude that there is no such solution available to us that is workable at this time. Accordingly, we examine the most appropriate methodology for calculating the cost of providing the service. We conclude that a bottom-up cost calculation is most reliable in light of the Court's concerns in MCI v. FCC and our reexamination of the manner in which PSPs allocate joint and common costs between local coin calls and compensable calls. Finally, we set forth the manner in which we apply our bottom-up approach to establish a fair default compensation amount.

1. Definition of Compensable Call

23. As an initial matter, we specify the types of calls for which PSPs may receive the default per-call compensation amount that we establish in this Order. ''Compensable calls'' for purposes of this Order are calls from payphones for which the payphone owner cannot receive compensation from another source.

24. Section 276 specifically provides that PSPs are not entitled to compensation for 911 emergency and TRS calls. Consequently, when entering the payphone business, PSPs assume the legal obligation of allowing 911 emergency and TRS calls to be made from their payphones without receiving per-call compensation. The term ''compensable call'' applies, as does this rulemaking proceeding, to intrastate as well as interstate calls, by virtue of specific provisions of section 276(b)(1)(A).

25. Specifically, we establish for purposes of this Order that the term ''compensable call'' includes: (1) access-code calls; (2) toll-free calls; (3) certain 0+ calls (e.g., 0+ calls made from a payphone where the PSP serve as an aggregator); (4) certain 0-calls (e.g., 0-calls in states that, with FCC permission, prohibit blocking of such calls); (5) certain inmate calls; and (6) certain toll-free Government Emergency Telecommunications Systems (GETS) 710 calls. ''Compensable calls,'' in the context of this Order, do not include: (1) coin calls or other calls, such as directory assistance calls, for which the payphone provider can otherwise charge; (2) presubscribed 0+ calls; and (3) 0-calls in states that do not prohibit blocking of 0-calls. We reiterate that, for purposes of this Order, calls that receive compensation from some other source, e.g., as part of an individual contract between a PSP and an IXC, are not entitled to per-call compensation under this Order.

2. Definition of Fair Compensation

26. In relevant part, section 276(b)(1)(A) requires that PSPs be ''fairly compensated for each and every completed * * * call.'' Neither the statute nor the legislative history makes clear, however, what Congress meant by the phrase ''fairly compensated.'' At the same time, section 276(b)(1) directs the Commission to achieve this goal in a manner that will ''promote competition among PSPs and promote the widespread deployment of payphone services to the benefit of the general public.'' The legislative history again provides little guidance. It would appear, however, that section 276 was enacted, in part, in recognition of the limitation on the ability of PSPs and carriers to negotiate a mutually agreeable amount as a result of TOCSIA's prohibition on barring IXC-access calls by PSPs.

27. In light of the above, we find that PSPs will be fairly compensated if, at a minimum, we: (1) balance the interest of PSPs and those parties that will ultimately pay the default compensation amount; and (2) ensure that the default compensation amount is sufficient to support the continued widespread availability of payphones for use by consumers.

28. We recognize that, because most payphone costs are fixed and each type of call has a relatively small marginal cost, a wide range of compensation amounts may be considered ''fair.'' As we discussed above, the vast majority of the costs of providing payphone service are fixed and common costs, and there is no one economically correct way to allocate such costs among the different types of calls that may be made from a payphone. Economic theory does suggest, however, that the costs of one service should not be cross-subsidized by another service. That is, consumers making one type of call, such as a local coin call, should not pay a higher amount to subsidize consumers that make other types of calls, such as dial-around or toll-free calls. In order to avoid a cross-subsidy between two such services that are provided over a common facility, each service must recover at least its incremental cost, and neither service should recover more than its stand-alone cost. Within these parameters, many different compensation amounts may be considered fair.

29. In its prior orders, the Commission defined ''fair compensation'' as the amount to which a willing seller (i.e., PSP) and a willing buyer (i.e., customer, or IXC) would agree to pay for the completion of a payphone call. In the Second Report and Order, the Commission, in establishing a default compensation amount, found that fair compensation required that dial-around calls contribute a proportionate share of the common costs of payphone service. We

continue to believe that this is an essential element of our determination of ''fair compensation'' in this context. We find that any other approach would unfairly require one segment of payphone users to disproportionately support the availability of payphones to the benefit of another segment of payphone users. Such subsidies distort competition and appear inconsistent with Congress's directive to eliminate other types of subsidies. The default compensation amount that we establish below seeks to ensure that the current number of payphones is maintained.

30. In light of the above considerations, we conclude that the default per-call compensation amount we establish should ensure that each call at a marginal payphone location recovers the marginal cost of that call plus a proportionate share of the joint and common costs of providing the payphone. We find such an approach satisfies the first condition set forth above of providing a per-call amount that is fair to both payphone owners and the beneficiaries of these calls (e.g., IXCs and toll-free subscribers). We believe that the $.24 compensation amount is fair, because it will allow PSPs to recover more than the marginal cost of providing payphone service for dial-around calls and thus contribute to the common costs of the payphone. We also find that basing this calculation on the marginal payphone location satisfies Congress's directive that we ensure the widespread deployment of payphones. As opposed to a calculation based on the average payphone location, use of a marginal payphone location should promote the continued existence of the vast majority of payphones. Thus, payphone owners will benefit because they will receive the compensation necessary to profitably provide service. Consumers and long distance carriers will benefit because payphones will remain widespread, which will ensure that consumers have ready access to make payphone calls using the long distance carrier of their choice.

3. Reconsideration of the Second Report and Order's Top-Down Methodology

31. In this section, we explain the Second Report and Order's compensation methodology that the Court remanded in MCI v. FCC and the manner in which the statutory constraints associated with TOCSIA and technological constraints limiting the availability of targeted call blocking affect the viability of such a compensation methodology. In light of these constraints, and mindful of the Court's findings in MCI v. FCC, we find that a compensation methodology based on the market rate for local coin calls currently will not ensure fair compensation for coinless calls from payphones. Additionally, upon reconsideration, we find that our prior assumption regarding recovery of joint and common costs was incorrect. This incorrect assumption undermines an important basis for a top-down methodology for determining the cost to PSPs of providing coinless calls, because such a methodology assigns an equal proportion of joint and common costs to both types of calls. Therefore, upon reconsideration, we conclude that a bottom-up approach is more appropriate than the top-down approach adopted in the Commission's previous orders, in which the Commission set the compensation amount for coinless calls from each payphone according to that payphone's deregulated local coin call rate. Although we do not adopt a top-down approach for calculating the compensation amount for coinless calls, we use a top-down calculation to test the reasonableness of our bottom-up calculation.

32. In the Second Report and Order, the Commission established a two-phase compensation system. Under the first phase, PSPs would receive, for a two-year period ending in October 1999, a default compensation amount of $.284 for each compensable call, absent an agreement between the PSP and IXC on a different rate. The Commission arrived at this figure by using a top-down approach for determining the costs to the PSP of making available coinless calls from their payphone. The Commission's top-down approach started with what the Commission determined was the most prevalent price of a deregulated local coin call (i.e., $.35). From this starting point, and consistent with the Commission's understanding of the Court's statements in *Illinois Public Telecomm.*, the Commission subtracted the costs of providing coin calls that are not incurred for providing coinless calls, an amount calculated to be $.066. Thus, for two years, an IXC would be required to pay the PSP $.284 for every compensable call.

33. The Second Report and Order required that, after October 1999, compensation for dial-around calls would be established by subtracting the net avoided costs of the dial-around call ($.066) from the deregulated local coin price charged by each payphone. Thus, under the second phase of the compensation system, compensation to PSPs for compensable calls would vary in relation to the local coin call price of the payphone being used.

34. In MCI v. FCC, the Court concluded that the Commission failed to adequately explain the underlying premise for the top-down approach in setting a default compensation amount. Specifically, the Court found that the Commission did not explain ''why a market-based rate for coinless calls could be derived by subtracting costs from a rate charged for coin calls.'' The Court found that if ''costs and rates depend on different factors, as they sometimes do, then [the Commission's] procedure would resemble subtracting apples from oranges.'' The Court posited that the Commission's conclusion might have depended on the premise that the market rate for coin calls generally reflects the cost of coin calls. Although the Court reasoned that such a premise could hold true in a competitive market in which costs and rates converge, the Court found that the Commission failed to explain its reliance on such a premise. The Court also cited the Commission's *First Report and Order,* in which, according to the Court, the Commission acknowledged that the coin call rate might potentially diverge from the cost of coin calls. Based on the finding that the Commission failed to adequately explain why the market-based method did not equate to ''subtracting apples from oranges,'' the Court remanded the matter to the Commission.

a. TOCSIA and Targeted Call Blocking.

35. Because of TOCSIA and the present lack of targeted call blocking, we conclude that the compensation system established in the Second Report and Order is currently unworkable. First, under TOCSIA, the PSP (or seller) must connect (or sell) all calls to the IXC. Under the Commission's prior approach, and after the two-year phase-in period, each PSP would be allowed to set the price for compensable calls at whatever level it chose by raising or lowering the local coin rate at a particular payphone. Accordingly, the PSP would be able to receive a greater compensation amount by raising the local coin price. At a minimum, this relationship creates a non-cost based incentive on the part of the PSPs to raise the local coin rate from a payphone, not to make more money from coin calls but to increase the level of compensation from dial-around calls. In most instances, we believe that the ability of a PSP to raise its local rate in this manner will be constrained by competitive forces. As the Court pointed out, however, we also have previously recognized that locational monopolies allow PSPs to set some payphones' rates above cost. Additionally, where a

payphone generates few local coin calls relative to the number of coinless calls, e.g., a payphone located in an airport, linking the coinless rate to the coin rate potentially could create instances where a PSP seeks to maximize its total revenue by raising the local coin rate, even if doing so deterred customers from making coin calls. In this situation, a PSP may be able to more than offset lost revenues from local coin calls with the compensation it would receive from coinless calls.

36. Second, because the IXCs' current call-blocking technology only allows for an all-or-nothing approach to blocking dial-around calls from a payphone, the IXC (or buyer) is unable to choose whether or not to accept (or buy) a particular call. In other words, the IXC must either buy every call from every payphone, regardless of the amount it must compensate the PSP for the calls, or buy no payphone calls at all. In this scenario—where the seller must sell and the buyer must buy every call or none at all—market forces are rendered ineffective as a means of achieving an efficient price. We therefore conclude that a default compensation amount that varies according to the deregulated local coin price does not ensure a fair compensation level, unless carriers have some ability to reject a call based upon the compensation amount for that call. Parties contend that such call blocking technology presently is not readily available in the network and will take some time for carriers to implement.

37. In providing for a default compensation amount that was allowed to vary according to the deregulated local coin price, the Commission stated that, under deregulation, competitive pressures would constrain the amount PSPs could charge consumers for such calls. Similarly, in an unrestricted market where IXCs compensate payphone owners based on an amount that varies according to the local coin price, IXCs ideally should be able to decline calls from payphones they believe to be excessively priced. Without targeted call blocking, however, IXCs cannot do this. All-or-nothing call blocking may provide some downward pressure on high dial-around prices charged by PSPs, but it is insufficient to reach a wholly competitive outcome under the circumstances surrounding the Commission's previous compensation mechanism.

38. We note that the lack of targeted call blocking is a temporary phenomenon. The overwhelming majority of payphones are, or soon will be, on payphone lines that transmit the appropriate coding digits, as required in the Commission's prior orders in this proceeding. Therefore, the ability to develop targeted call blocking technology rests largely with the IXCs. We strongly encourage the IXCs to develop targeted call blocking. Targeted call blocking is an essential element to an IXC's ability to negotiate with PSPs in a true market setting.

39. As we stated above, we are aware that targeted call blocking is not the only problem that must be resolved in order to move to a deregulated resolution. Targeted call blocking is, however, a critical element to real-time, wide-spread negotiations between payphone owners and carriers. It is the threat that a PSP may have its dial-around calls blocked that brings PSPs and IXCs into equal bargaining positions. Because it is in the interests of both the PSP and the IXC to negotiate a mutually acceptable compensation amount, we do not desire, nor do we foresee the need for, the widespread use of targeted call blocking once the technology is implemented and deployed. We also note that, although the default compensation amount that we establish in this Order is reasonable and fair to all parties, an IXC that finds the default compensation amount to be excessive may help remedy that situation by developing targeted call blocking capability.

b. Recovery of Joint and Common Costs.

40. In establishing a compensation amount based on the price of a local call, the Commission in the Second Report and Order sought to equalize the contribution that each call made to the joint and common costs of each call. In adopting a top-down derivation of the coinless default compensation amount based on the price of a local coin call, the Commission assumed that PSPs set prices so that each type of call contributes an equal amount to joint and common costs. Upon reconsideration, and based upon the additional information in the record, we reassess the Commission's prior assumption regarding recovery of joint and common costs, finding that our assumption is not necessarily valid. This reassessment undermines an important basis for the Commission's top-down methodology.

41. We find insufficient evidence in the record to ascertain the method by which PSPs set prices for a various types of calls in order to recover the common costs of providing payphone service. The error in the Commission's assumption that each call contributes equally to joint and common costs may be demonstrated by examining the revenue that PSPs receive for 0+ and 1+ calls. Although coinless calls (such as 0+ calls) cost less than coin calls, some PSPs receive more than $.70 per 0+ call. This is more than twice as much as the prevailing $.35 local coin price. Also, the RBOC Coalition states that for many payphones, the 1+ sent-paid charges (i.e., the coin price for a long distance call) exceeds basic long distance charges by an average of $1.45 per call. Clearly, some PSPs do not price their calls such that each call makes an equal contribution to joint and common costs. Therefore, if our goal is to price dial-around calls such that they make a proportionate contribution to joint and common costs, we cannot do so by basing their price on the local coin calling price, because we do not know how individual PSPs price local coin calls in relation to the recovery of joint and common costs. Therefore, upon reconsideration, we find unreliable the assumption that PSPs set prices so that each call recovers an equal amount of joint and common costs.

c. MCI v. FCC.

42. Finally, in light of the Court's concerns regarding whether a market-based rate for coinless calls could be derived by subtracting costs from a rate charged for coin calls, we find that a top-down approach is unsuitable at present for setting default compensation. By using a bottom-up approach, we resolve the Court's concerns, because we focus on the costs of a dial-around call, rather than attempting to compare the rate and costs of a local coin call to the cost of a dial-around call. The Court's concerns in *MCI* v. *FCC* and the other factors discussed in this section persuade us that, at this time, a bottom-up compensation methodology is more appropriate than a top-down methodology.

5. Selection of a Bottom-Up Methodology

43. In light of existing technological, statutory, and economic constraints, we find that the most appropriate mechanism for establishing fair compensation is a bottom-up approach. We recognize that such a compensation mechanism does not replicate the price that the market would set for each and every call from a payphone, which, in an ideal setting, would be our preferred outcome. Under the constraints detailed previously, however, we conclude that a bottom-up approach will best comply with the statutory directive of ensuring the widespread deployment of payphones in a manner that is consistent with our definition of fair compensation.

44. In establishing a bottom-up approach, we considered three standard

economic approaches to setting prices, in addition to our review of the top-down methodology used in the *Second Report and Order:* (1) marginal cost pricing; (2) the RBOC Coalition's Ramsey's-style pricing; and (3) fully distributed cost coverage. As explained in Section IV.B. of the Order, we find that a fully distributed cost-coverage approach best fulfills our statutory directives within the economic, technological, and statutory constraints that currently exist. Specifically, we find that a fully distributed cost-coverage approach that determines cost by working from the bottom up will comport with statutory directives and satisfy the Court's concerns raised in *MCI* v. *FCC.* Furthermore, we find that, in keeping with Commission precedent arising from our implementation of the 1996 Act, payphone costs will be calculated on a forward-looking basis. Thus, in setting a default compensation amount using a fully distributed cost-coverage approach (our ''bottom-up'' methodology), we examine the costs of a new payphone operation installing new payphones.

45. As explained above, we find that ''fair compensation'' means that the marginal cost of compensable calls, plus an appropriate amount of the joint and common costs of the payphone operation, will be recovered for each compensable call. We conclude that a bottom-up methodology will provide fair compensation consistent with this standard. Thus, rather than focusing on the cost of adding one additional payphone to an operation, we instead examine the total costs of a payphone operation and distribute those costs across all of the payphones in that operation. We find that this approach results in a compensation amount that is fair to both payphone owners and the beneficiaries of these calls. We also conclude that establishing a compensation amount that allows a PSP to recover its costs will promote the continued existence of the vast majority of payphones presently deployed, thereby satisfying what we consider to be Congress's primary directive that we ensure the widespread deployment of payphones.

46. In this Order, we consider a cost to be ''joint and common'' if the amount of the cost does not vary with respect to the mixture of calls at the payphone. For example, the cost of a payphone's enclosure does not change due to an increase in the number of coin calls relative to coinless calls, or vice versa. We conclude, therefore, that the enclosure is a joint and common cost, and we attribute the enclosure costs to all types of calls. We attribute costs that are not joint and common to the type of call associated with that cost. For example, as the number of coin calls from a payphone increases, the coin collection costs also will rise due to the higher frequency of coin collection trips. We therefore attribute coin collection costs solely to coin calls.

47. As discussed above, we find that the use of a bottom-up approach also resolves the concern that PSPs do not necessarily price their various services such that each call recovers an equal share of joint and common costs. In the Second Report and Order, the Commission's goal was to set a compensation amount that would allow each call to recover its share of joint and common costs. The top-down approach, which subtracted the avoided costs of a compensable call from the price of the local coin call, assumed that each call would contribute equally to the joint and common cost. As explained above, we find that this assumption is not necessarily reliable, based on the manner in which PSPs price various calls. Under our bottom-up approach, however, that problem no longer is at issue. Under the bottom-up approach, we use the total monthly joint and common costs of the payphone operation and divide these costs by the total monthly number of calls from a marginal payphone location. This results in a per-call share of the joint and common costs. Thus, a bottom-up approach alleviates the problem of how to ensure that each call has the opportunity to recover its share of joint and common costs.

48. Our bottom-up approach also avoids the impact of the technological restrictions discussed previously that undermine our previous approach of allowing the default rate to change with the deregulated coin rate of each payphone. As explained above, in the bottom-up system we adopt herein, we have set a single amount for compensation, which we find fair and compensatory. IXCs do not need the ability to block calls from payphones based on a varying compensation amount because all payphones will use the same compensation amount, absent an agreement between the parties for some different level of compensation. Finally, our bottom-up approach alleviates the Court's concerns in MCI v. FCC stemming from the Commission's use of the local coin price as the starting point of compensation for dial-around calls. Under the bottom-up approach, we do not use the local coin price to determine the costs associated with a compensable call. Thus, we do not run afoul of the Court's concern that the Commission was ''subtracting apples from oranges.'' Rather, we determine each of the costs of the dial-around call and add them together, from the bottom up, to determine the per-call compensation amount.

49. Our default compensation amount is calculated to allow the payphone owner the opportunity to recover a proportionate share of joint and common costs associated with dial-around calls. Payphone owners may, of course, determine that contracting with IXCs to receive a lower amount will attract more dial-around traffic and thus increase their profits. Payphone owners also have the opportunity to set their own prices for non-compensable calls, e.g., coin calls and presubscribed calls, and may set the price for each type of call so that it covers the marginal cost plus a proportionate share of joint and common costs. This would allow a payphone in a marginal location the opportunity to recover all of its costs. Of course, a payphone owner may dismiss this pricing strategy in favor of an alternative strategy that may prove to be more profitable.

50. We note that our approach is not designed to make every payphone profitable. Payphones with sufficiently low call volumes or sufficiently high costs will not be profitable, regardless of the compensation amount we establish. We discuss in Section III.B.3.b. of the Order our selection of a marginal payphone location and our calculation of the number of calls from that location, important components of our calculation of the compensation amount.

51. Certain petitioners argue that we should use a marginal cost pricing approach, in which prices are set by considering the cost of producing one additional good. Others argue that we should use a Ramsey's-style pricing approach. We find that marginal cost pricing and the RBOC Coalition's Ramsey's-style pricing are ineffective in complying with our statutory goals. As explained elsewhere, however, we conclude that basing our determination of fair compensation on the marginal payphone is the approach most consistent with the statutory directive of ensuring widespread deployment of payphones.

52. Specifically, we reject marginal cost pricing for the same reasons given by the Commission in the *First Report and Order* and alluded to in Section III of the Order. That is, a purely incremental cost standard for dial-around calls would undercompensate PSPs for dial-around calls, because it would prevent PSPs from recovering a reasonable share of joint and common costs from those calls. Thus, the revenue

that would have been received from these calls would be subsidized by revenue from other types of calls, which, in and of itself, contradicts Congress's directive to eliminate subsidies and also distorts competition. Our bottom-up approach, however, adequately considers and accounts for the dial-around call's share of the joint and common costs. In Section III.B.2.c. of the Order, we reject the RBOC Coalition's version of Ramsey's-style pricing, in part, because the pricing methodology is extremely sensitive to small changes in input estimates. Furthermore, we find unreliable the input estimates provided by the RBOC Coalition.

6. Conclusions and Response to the Court

53. We conclude, for the reasons stated above and elsewhere in this Order, that a bottom-up methodology is the most appropriate means for establishing a default compensation amount at this time. We also conclude that our selection of a bottom-up methodology reasonably resolves the Court's concerns, as expressed in *MCI* v. *FCC.* As the Court indicated, a market-based rate may be an appropriate method at some point in the future. When the time is appropriate, we will consider revisiting this issue.

C. Reconsideration Issues

54. In this section, we address petitioners' arguments in support of, and in opposition to, various methodologies for determining the default compensation amount. In addition to the bottom-up methodology described above, we set the default compensation amount.

1. Alternative Compensation Methodologies

55. In this Section, we address alternative compensation mechanisms put forth by commenters that were not discussed above in connection with the Court's remand.

a. Duration Methodology.

56. Several commenters argue that the compensation amount for a toll-free call should be based on the duration of the call. We are not convinced by the record evidence that the marginal costs of a relatively shorter dial-around call are significantly different than those of a longer call. Although the line charge for some coin calls may vary depending on the length of the call, dial-around calls do not incur any additional line charge, regardless of their length. Indeed, as we have discussed, because most payphone costs are fixed, they do not vary with the length of the call. Nor are we convinced that longer calls cause a significant amount of additional wear and tear on a payphone. Consistent with the Commission's determination in the Second Report and Order, we decline to make an adjustment for opportunity costs of a dial-around call because we conclude that it is unlikely that the revenue from another call will be lost. In the Second Report and Order, the Commission concluded that compensating PSPs for opportunity costs was not necessary because the evidence demonstrates that dial-around calls only occupy 1.8 percent of available payphone usage time. In this Order, we decline to consider location rents as a cost of a dial-around call. Even if we were to consider including compensating PSPs in connection with location rents, the amount of rent would not vary with the duration of a phone call because the amount of payphone revenue would not change.

57. Furthermore, we are persuaded that a duration-based methodology would result in added expense, delay, and confusion. Several complaints have already been filed with the Commission regarding payment of payphone compensation. We believe the establishment of a duration-based methodology would result in the filing of even more complaints, thereby exacerbating, rather than resolving, the current situation.

58. Even if we based the compensation amount on the duration of a call, we could not cap the compensation amount at $.285 or any other amount, because it would not fully compensate PSPs. Assuming the default amount were set at $.285, PSPs receiving less than $.285 for short calls must receive more than $.285 for longer calls in order for the PSP to be fully compensated. We therefore decline to alter the payphone compensation mechanism to reflect the duration of the call. We note, however, that IXCs and LECs are free to use measured service compensation in their contracts, if they so choose.

b. RBOC Coalition's Ramsey's-Style Pricing Methodology.

59. We again decline to adopt the RBOC Coalition's elasticities methodology. Our objection is not that elasticities and marginal costs cannot be taken into account in setting product prices, especially in an industry with high fixed and common costs. Rather, we find that we do not have sufficiently accurate information in the record to use elasticities and marginal costs in this particular case. We also conclude that, for purposes of setting dial-around per-call compensation, the RBOC Coalition's proffered methodology results in prices that are unreliable. Specifically, the RBOC Coalition's methodology is highly sensitive to estimated values of elasticities and marginal costs. In conjunction with the RBOC Coalition's highly speculative estimates of the elasticities and marginal costs at issue, we find that the resulting ''suggested price'' is widely variant and thus of little practical value in establishing a reasonable compensation figure. Simply put, the RBOC Coalition's methodology gives wildly divergent answers when the inputs are changed even slightly, and we find such variance unacceptable given the unreliability of the information we have for input data.

c. Bellwether Compensation.

60. Sprint argues that we should identify the most efficient carrier and base the dial-around compensation amount on that carrier's costs, i.e., the so-called ''bellwether'' approach. We decline to adopt a bellwether approach because there is insufficient information on the record to conclude that the cost differences among PSPs with data on the record are due to differences in efficiency. All of the parties that submitted data on the record operate payphones in multiple areas and in multiple states. Each region of the country experiences different costs. For example, payphones in dry climates require less protection from rain than payphones in wetter climates. Therefore, a PSP in a more arid region could install a less protective and thus cheaper enclosure than a PSP in a wetter region. Clearly, a PSP in the wetter region should not be deemed less efficient because it needs to invest in a more expensive enclosure. Similarly, we find that regional differences in labor costs and telephone line expenses would affect the cost of a payphone operation. Sprint did not provide any justification showing that any party was more efficient than another.

d. Caller-Pays Methodology.

61. Under a caller-pays compensation methodology, the calling party would pay for dial-around calls by depositing coins or using a credit card. The caller-pays compensation mechanism is a variation of the set use fee compensation mechanism. Under the set use fee compensation mechanism, the IXC imposes a charge on the caller, collects payment from the caller, and remits that money to the PSP. In the *First Report and Order,* the Commission rejected the caller-pays approach and the set use fee approach on similar grounds. Despite some parties' requests,

we decline to adopt a caller-pays compensation methodology at this time.

62. We expect IXCs to develop the technology necessary to employ targeted call blocking, which will allow them to block calls from PSPs that they find to be excessively priced. With the bargaining power afforded to them by the ability to block calls, we are hopeful that IXCs will negotiate privately with PSPs for fair and mutually agreeable compensation amounts. Our preference is for IXCs and PSPs ultimately to enter into privately negotiated agreements establishing compensation amounts for dial-around calls. Although some economists would argue that a caller-pays methodology forms the basis for the purest market-based approach, we find that the statutory language and legislative history indicate Congress's disapproval of a caller-pays methodology. We therefore conclude that we should monitor the advancement of call blocking technology and any accompanying marketplace developments before reconsidering a caller-pays compensation approach.

63. We also note that some parties urge us to adopt a ''modified caller-pays plan.'' Under a modified caller-pays plan, entities subscribing to a toll-free number would have three options for handling calls made from payphones. First, the subscriber could elect to accept calls from payphones and pay the charges associated with those calls that are passed through to it by the IXC. Second, the subscriber could block all calls from payphones, eliminating the need for compensation to the PSP. Third, the subscriber could elect to use a special ''area code'' (i.e., 8XX, instead of ''800'' or ''877'' codes) that would enable it to block incoming payphone calls that callers chose not to pay for with coins or a credit card. For the reasons provided above for not instituting a mandatory caller-pays system, we also decline in this proceeding to impose the modified caller-pays or 8XX plan. We note that a modified caller-pays plan is the subject of a petition for rulemaking filed by AirTouch and that the Commission may examine the issue further if that petition is granted.

e. Requests for Exemptions from Compensation.

64. Several petitioners assert that certain types of calls, such as ''help line'' or paging calls, should be exempt from per-call compensation charges. Other petitioners urge us to exempt from compensation requirements payphone calls to 800 hotlines and Electronic Benefit Transfer (''EBT'') services. Specifically, these parties request that we either waive the per-call compensation amount or establish an 8XX number for non-profit organizations. We find that Congress clearly instructed us in Section 276 to ensure compensation for ''each and every'' call from a payphone. Congress explicitly exempted only two types of calls: emergency calls (911) and TRS calls. Because Congress did not provide for any other exceptions, we cannot grant an exception for these types of calls. Even if Congress permitted us to grant an exception for EBT calls, we are unconvinced that we should do so. We understand that when a caller is placing an EBT call, the buyer of that call will be the government. This is insufficient justification, however, to deny payphone owners compensation for the use of their payphone. We are confident that our default compensation amount is fair to all parties involved. In receiving compensation, payphone owners will benefit from their decision to place their payphone where consumers benefit from using it. In addition, carriers will pay no more than a proportionate share of the payphone's joint and common costs.

65. We also decline requests to artificially raise the local coin calling rate or to re-regulate payphone prices so that calls like EBT calls can be made for free or at a reduced price. We understand that because of our default compensation amount, government agencies will ultimately spend more money to disburse benefits. Under Citicorp's proposal to raise the local coin calling price, however, consumers will still pay for those calls, albeit in a different form. Under Citicorp's proposal for free or reduced-price EBT calls, PSPs would not receive the extra compensation from EBT traffic and therefore would have no economic incentive to locate payphones according to the needs of EBT callers. Any such scheme also would involve creating a subsidy, an option that Congress specifically eliminated in the 1996 Act.

66. We note that APCC states that some PSPs would be willing to reduce the amount of per-call compensation if they find evidence that IXCs do the same. We encourage those parties with budgetary concerns to meet with the IXCs and PSPs to reach a voluntary agreement regarding per-call compensation.

2. Cost Calculation

67. In this section, we address challenges to three aspects of the Commission's calculation in the Second Report and Order of the cost of a dial-around call. Petitioners challenge the accuracy of the various sources of cost data on which we relied in determining the cost of a dial-around call. Petitioners challenge our choice of a marginal payphone location in establishing certain per-call costs. Finally, petitioners argue that various components of our cost calculation were either improperly allowed, improperly disallowed, or improperly calculated.

a. Source of Cost Data.

68. In this section, we address issues raised concerning the cost data discussed in the Second Report and Order. We also examine the cost data submitted in response to our *Public Notice* and in petitions for reconsideration. Petitioners raise concerns regarding five sources of cost data. First, petitioners argue that, in the Second Report and Order, the Commission relied too heavily on data from independent PSPs. Second, parties claim that NYNEX's cost studies show that NYNEX's average cost of a coin call is less than $.25, implying that the compensation amount also should be less than $.25. Third, parties claim that, in the Second Report and Order, the Commission ignored Sprint's cost data. Fourth, AT&T submitted data from SBC that purportedly shows that, in using a LEC's costs, the per-call compensation amount should be less than $.25. Fifth, MCI submitted a cost study purporting that the average cost of a dial-around call is significantly less than the Commission estimated. We address each of these issues separately.

69. *Reliance on APCC and Independent PSP data.* When calculating the average cost of a dial-around call in the Second Report and Order, the Commission relied on data that it concluded was reliable. In its petition for reconsideration, AT&T asserts that the Second Report and Order generally overstates the costs of payphone calls, because the Commission relied too heavily on cost data submitted by APCC and other independent payphone providers. AT&T further states that most payphones are operated by LECs, not independent payphone owners. In the Second Report and Order, the Commission relied solely on APCC data only when determining the number of calls made from a payphone in a marginal location. In this Order, however, we do not rely on that calculation. We therefore need not address AT&T's arguments regarding the use of APCC data.

70. *NYNEX cost studies for Massachusetts and New York State.* Before the Commission issued the Second Report and Order, Sprint petitioned the Commission to require

NYNEX to distribute to all parties of record a copy of the confidential Massachusetts DPUC study, which concludes that the cost of a coin call is $.167. The Commission denied Sprint's petition. AT&T contends that the Massachusetts DPUC study supports a per-call dial-around price of less than $.167. AT&T suggests that the LECs failed to supply cost data because such data would militate in favor of establishing a compensation amount that is less than an amount that would benefit the LECs.

71. On July 10, 1998, the New York Public Service Commission (PSC) filed comments showing that, in a study conducted in New York, Bell Atlantic's average cost of a coin call is less than $.25. Several parties cite this study in support of AT&T's contention that, due to lower costs experienced by LECs, the default, per-call compensation amount should be less than $.25. We believe that, when taking into account all the appropriate costs, the average cost of making a coin call in New York is likely to be higher than the $.25 that the New York PSC reported.

72. *Sprint data.* In the Second Report and Order, the Commission did not rely heavily on Sprint cost data. AT&T alleges that the Commission failed to adequately consider Sprint's cost data. We conclude that the Sprint data are unreliable. First, Sprint's return and depreciation estimates appear to be based on embedded costs, not forward-looking costs. This is significant in assessing the reliability of Sprint's data, because embedded costs do not necessarily reflect the economic cost of establishing a current operation. Specifically, Sprint's cost study suggests that it can recoup the value of a payphone by recovering $6.98 each month for five years. Thus, based on Sprint's data, a Sprint payphone, including pedestal, enclosure, and installation, costs $418.80. The evidence on the record, however, demonstrates that a newly installed coin payphone unit costs more than $2,300. Clearly, Sprint's asset return requirement is too low.

73. Second, we find appropriate our decision in the Second Report and Order to not rely on Sprint's estimate for Sales, General and Administration (SG&A) costs (i.e., overhead costs). Sprint reported that its SG&A costs are only $8.51 per payphone per month. This is almost 70 percent less than a large PSP's SG&A cost and nearly 50 percent less than SBC's SG&A estimate of $16.52. In light of the contrary record evidence, and given our experience regulating telecommunications companies, including payphone operators, we find that Sprint's SG&A estimate does not reasonably represent the costs of a stand-alone payphone company. For this reason, we find that the Commission properly exercised its discretion and did not rely on Sprint's estimate of SG&A costs. We note that, although the Commission did not fully explain its reasoning in the Second Report and Order, we believe the Commission's decision was nonetheless correct. Furthermore, for these same reasons, we conclude that we should not rely on Sprint's costs in this Order.

74. *SBC data* (as submitted by AT&T). In its petition for reconsideration, AT&T submits a new cost study, called Project Quintet, that SBC performed to facilitate the possible sale of its payphone operations. AT&T argues that the Project Quintet data demonstrate that the average cost of a coin call is $.195. SBC states that the costs enumerated in Project Quintet were incomplete and did not account for several costs of a payphone operation, including legal support and rent. The RBOC Coalition submitted supplemental information regarding maintenance and SG&A costs. AT&T believes that the Project Quintet data are sufficient to estimate SBC's payphone costs and do not require modification.

75. We note that the Project Quintet data that AT&T submitted does not include line items for legal support, rent, advertising, or other similar costs. We therefore concur with SBC that those costs were not included in the data submitted by AT&T. We find, however, that the Project Quintet data, as supplemented by SBC, provides some assistance to our determination of a fair default compensation amount. Although the capital costs derived from the Project Quintet data are unusable because they are based on embedded costs, we conclude that the SG&A and maintenance costs, as supplied by SBC, are reliable.

76. *MCI data.* In response to our *Public Notice*, MCI submitted a payphone cost study suggesting that the average cost of a coin call is $.16, and the average cost of a coinless call is $.12. Upon review, we conclude that MCI's cost study is unreliable for four reasons. First, the cost study is based on a hypothetical business model. Because payphones serve a wide variety of locations, including outdoor locations, we find that the capital cost data from actual payphone operations will better reflect a PSPs actual costs. Second, MCI's SG&A estimate is based on multiplying the capital investment by 10.4 percent. This 10.4 percentage was arrived at by examining AT&T's overhead costs. AT&T is primarily a long distance company, not a payphone operator. We find that MCI failed to adequately explain why a payphone operator's overhead costs should bear the same relationship to capital as AT&T's. We thus find unreliable MCI's percentage of 10.4 for estimating overhead costs. Furthermore, MCI multiplies its overhead factor by an amount of capital that we find to be too low, resulting in an SG&A estimate that consequently is too low. We thus conclude that MCI's SG&A cost estimate is unreliable.

77. Third, we find that MCI's cost study is incomplete. For example, MCI did not include any cost estimates for trucks, replacement parts, and other items. We find that these costs are required, however, for a payphone operation. Also, MCI estimated the monthly telephone expenses, in part, by using the 1996 ARMIS reports, using line items USOA 2315 and 6315 (public telephone equipment), but did not account for the payphone costs included in accounts 6533 and 6534. For these reasons, we conclude that MCI's cost study is unreliable.

78. *LEC payphone data versus non-LEC payphone data.* Several parties contend that LEC payphones are more efficient than non-LEC payphones. Parties point to NYNEX cost studies that allegedly show that NYNEX experienced lower costs than non-LEC PSPs. As we state above, we are unable to verify the validity of some of this third-party information. Also, some of the third-party data appears to be unreliable on its face. Also, the RBOC Coalition states that the NYNEX studies do not include all payphone costs. Thus, we find that, before using third-party information, such information must be verified.

79. We conclude, however, that much of the data submitted by the independent PSPs reliably reflect the costs of a stand-alone payphone operation. First, as the Commission noted in the Second Report and Order, the independent PSPs' data are consistent with their Securities and Exchange Commission (SEC) forms 10K, which must be certified to by an officer of the company. Further, these data are based on their own, actual payphone operations. In certain instances, where we could not use a particular cost element because it did not accurately measure the cost we were examining, the RBOC Coalition and PSPs submitted supplemental data that convinced us of the data's reliability. In addition, in response to our request, the RBOC Coalition supplied data for payphone line costs and FLEX ANI cost recovery tariffs. We find the payphone line cost

data and FLEX ANI data to be reliable, because the cost estimates were largely taken from tariffs, with the remaining figures provided with sufficient documentation to convince us they are correct.

b. Use of Marginal Payphone Location.

80. To establish a per-call default compensation amount based on the costs of a payphone operation, the cost of that operation must be divided by a particular number of calls. In the Second Report and Order, we concluded that we should use the number of calls at the marginal payphone location. A marginal payphone location is a location where the payphone operator is able to just recoup its costs, including earning a normal rate of return on the asset, but is unable to make payments to the location owner. The Commission determined that when the 1996 Act was passed and payphones were receiving dial-around compensation on a per-phone basis, the marginal payphone location experienced 542 calls per month.

81. We reaffirm that use of the marginal payphone location is necessary to fairly compensate PSPs and ensure the widespread deployment of payphones in compliance with the mandates of section 276. We find that basing the default compensation amount on an average payphone location would cause many payphones with less-than-average call volumes to become unprofitable. We note that many states examining the payphone market have concluded that there are a sufficient number of payphones and thus a public interest payphone program is unnecessary at this time. We conclude that, if we were to base the default compensation amount on the average payphone location, many payphones would become unprofitable and exit the industry. We therefore conclude that we should use the marginal payphone location when establishing the default compensation amount. Because it assures fair compensation for the overwhelming majority of payphones, we conclude that the methodology we adopt in this Order will not negatively affect the current deployment of payphones and thus is consistent with Congress's goal of widespread deployment of payphones.

82. MCI asserts that use of a marginal payphone location suffers from a ''circularity'' problem because the number of calls at a marginal payphone location is affected by the compensation amount. Thus, an increase in the per call compensation amount means that a payphone needs fewer calls to break even. The ''circle'' thus consists of call volume being a function of compensation, and compensation being a function of call volume. Although MCI argues that this circularity undermines the use of a marginal location, this same concern applies equally to the use of an average location, or for that matter any volume level the Commission could choose as a rational starting point for its analysis. This is true because the problem does not arise from the selection of average versus marginal payphone locations, but rather is inherent in the use of a per-call compensation scheme, as mandated by the statute. As the default amount increases, more low volume payphones become profitable; as default amount decreases, more payphones become unprofitable and are likely to be taken out of service.

83. The concern identified by MCI requires us first to deduce an appropriate level of payphone deployment, in order to calculate a ''fair'' compensation amount. Based on the evidence in the record, we have concluded that the current approximate level of deployment most appropriately satisfies Congress's stated goal of promoting widespread deployment of payphones to the benefit of the general public. This conclusion is supported by the filings of several states that have studied the payphone markets in their respective jurisdictions and concluded that the current deployment of payphones is adequately meeting the needs of the public. Realizing that many payphones with below average call volumes will disappear if we use the average payphone location to establish a default compensation amount, we instead conclude that the use of marginal payphone location best satisfies Congress's goal of widespread deployment by ensuring the profitability of most existing payphones.

84. In the *Second Report and Order*, the Commission determined that a payphone in a location where it originates 542 calls per month would earn just enough revenue to recover its costs, but not enough to pay the premises owner a commission. This number was derived using data largely collected in 1996. After those data were collected, the price of local coin calls was deregulated and payphone owners began receiving per-call compensation. Because payphone owners may now receive per-call compensation, payphones can be sustained with fewer calls being made. Before the establishment of per-call compensation, payphones required an artificially high number of calls to be profitable. We thus conclude that we should re-estimate the number of calls at a marginal payphone location to account for the effects of deregulation of the local coin call and per-call compensation.

85. In order to determine the number of calls at a marginal location, we consider three basic scenarios. In the first scenario, a premises owner is willing to pay its LEC PSP to install a payphone on its property, even though the payphone does not generate sufficient revenue to pay for itself. In the second scenario, the payphone on the premises owner's property generates sufficient revenue to pay for itself. This premises owner need not pay the LEC PSP for the operation of the payphone, but the LEC PSP may not generate enough revenue from the payphone operation to pay the premises owner a location payment. In the third scenario, the payphone generates revenue sufficient for the premises owner to require the LEC PSP to pay a location rent.

86. We asked the RBOC Coalition to submit: (1) the number of payphone calls that must be placed in order for the premises owner to not have to pay the LEC PSP for the payphone; and (2) the number of payphone calls that must be placed in order for the LEC PSP to begin paying a location payment to the premises owner. The RBOC Coalition found that, on average, if the payphone had 414 calls per month, the premises owner would not have to pay for the payphone. The RBOC Coalition states that it does not base these decisions on call counts, but on daily revenues, or margins. The RBOC Coalition estimated the call counts from their revenue or margin requirements. We find this to be acceptable, because call counts correlate to revenues. The RBOC Coalition also found that, on average, the LEC PSP would have to pay location rents to a premises owner that had a payphone with 464 calls or more per month. The midpoint between these two numbers is 439. The RBOC Coalition notes that its member-LECs do not decide to pay a location payment or require payment from the premises owner based solely on monthly call volume, but also consider the mixture of call-types and upkeep costs of the payphone. Because we are examining costs of all payphones, we find that the average call volume that the RBOC Coalition reported for these two locations is reasonable and appropriate. We further conclude that we will use in our calculation of the default compensation amount the midpoint between 414 and 464, i.e., 439.

87. MCI alternatively argues that the cost of the payphone that a PSP installs will be related to the call volume at that location. MCI suggests that a PSP

operating in a marginal payphone location may install a less expensive payphone unit than a PSP operating in an average payphone location. MCI therefore concludes that if we use the average cost of a payphone location, we should use the call volume from the average payphone location.

88. Payphone unit requirements vary from site to site. Accordingly, the costs of operating payphones at differing locations also vary. We believe it is theoretically possible that some payphone elements commonly used at high volume locations, such as a pedestal or enclosure, will not be used at marginal payphone locations. There is nothing in the record, however, indicating the extent to which this might be true. MCI's assertion that low volume locations use less expensive payphone units is unsupported by evidence from its own or any other payphone operation. If, as MCI suggests, a payphone in a marginal payphone location can operate successfully without some payphone elements, such as a pedestal or enclosure, it is unclear why a PSP at an average location would install these elements. Furthermore, other costs, such as increased maintenance costs, may be incurred when a PSP declines to install these same elements. For example, pedestals and enclosures provide some protection for a payphone. We find it plausible that a payphone without these elements would require greater maintenance costs. MCI's rationale, however, makes no allocation for these additional costs. Because we are establishing a compensation amount for all payphones, we use the average cost of a typical PSP. For the reasons stated previously, however, we do not use the average call volume. In sum, there is no support in the record for MCI's assertion that the fixed costs at a marginal payphone location will be significantly different from the fixed costs at an average payphone location.

89. Finally, in light of MCI's concern, we verify that a marginal location can support an average payphone. We conclude that the costs of the average payphone nearly matches the monthly revenue from a marginal payphone. We explain the basis of our conclusion below.

90. The RBOC Coalition states that its average payphone has 478 payphone calls per month. The RBOC Coalition also states that these 478 calls consist of: 155 dial-around calls per month, 280 local coin calls per month, and 43 other calls per month. We assume that two thirds of the 43 ''other'' calls (i.e., 29 calls) are operator-assisted calls (e.g., 0+, 0-, 00-calls) and that the remaining one third (i.e., 14 calls) are coin calls, such as directory assistance and 1+ calls. Thus, we conclude that 61.5 percent of the average RBOC payphone's calls are coin calls; 32.4 percent of the payphone's calls are dial-around calls; and the remaining calls 6.0 percent of calls are operator assisted calls.

91. Next, we determine that the monthly costs of a coin payphone in a marginal payphone location is $140.17. We reach this figure by adding the monthly joint and common costs of $101.29 to the coin-related costs of $38.87. The monthly coin-related costs are comprised of the monthly cost of the coin mechanism, the monthly termination charges, and the monthly coin collection costs.

92. Assuming that a payphone receives $.35 for each of the 270 coin calls at a marginal location, $.231 for each dial-around call (the amount before interest for the four month delay) for each of the 142 dial-around calls at a marginal payphone location, and $.50 per call for each of the 26 operator assisted calls at a marginal payphone location, the payphone would generate $140.30 in revenue. Thus, we find that the marginal payphone location can support the costs of a typical payphone. We therefore find MCI's argument unconvincing.

c. Location Rents.

93. In the Second Report and Order, the Commission calculated an estimate of the avoided cost of a dial-around call by dividing the joint and common costs by the number of calls at a marginal payphone location. Because the marginal payphone location cannot generate revenue sufficient to pay the premises owner a location rent, the Commission concluded that location rents should not be included in the costs covered by a payphone at a marginal location. The Commission declined to include location rents, believing that a payphone at a marginal location should generate revenue sufficient to cover only the payphone's installation and upkeep, plus a reasonable return on investment.

94. It is axiomatic that, at a marginal payphone location, the payphone earns just enough revenue to warrant its placement, but not enough to pay anything to the premises owner. We further find that a marginal payphone location is a viable payphone location, because the payphone provides increased value to the premises. Many premises owners find payphones to be sufficiently valuable to warrant paying for the installation of a payphone where a payphone would not otherwise exist. The Project Quintet data shows that SBC estimated that 14 percent of its payphones are semi-public payphones. These are payphones that the premises owner pays the LEC to install and operate, because the payphone location does not generate enough traffic to support a payphone. We therefore decline to reconsider the Commission's determination in the *Second Report and Order* to not include location rents in our cost calculation. We note that if we were to consider rental payments, we would have to use a higher number of calls than the marginal payphone location.

d. Coin Mechanism.

95. In the Second Report and Order, the Commission determined that the per-call cost of the coin mechanism was $.031. PSPs argue that the cost of a coin mechanism should not have been deducted, because the cost cannot be avoided. On reconsideration, we reaffirm our treatment of the payphone coin mechanism in the Second Report and Order. We find the actual deployment of numerous coinless payphones is convincing evidence that undermines the assertion that such payphones are not economically viable. Even the RBOC Coalition apparently admits that more than 20,000 of its members' payphones are coinless. While the record does not appear to include similar data for independent PSPs, we would expect that, given the historic differences in the manner in which RBOCs and independent payphone owners have deployed their payphones, the percentage of coinless payphones deployed by independent PSPs is even higher that the RBOC Coalition members. This conclusion is consistent with reports that nearly six percent of all installed payphones in 1997 were coinless. Moreover, the RBOC data and this latter information reflect industry deployment as of year end 1997, at which time per call dial-around compensation had only recently been implemented. Needless to say, the availability of dial-around compensation greatly increases the economic viability of coinless payphones. Such viability should be even further enhanced by the continuing (and apparently rapid) growth of dial-around calls and simultaneous decrease in the number of coin calls. Indeed, as the percentage of dial-around calls increases relative to all calls from payphones, the coin mechanism becomes increasingly unnecessary. In fact, a coin mechanism is likely to be installed only where the coin traffic warrants the expense. For these reasons we are convinced that the

previous treatment of the payphone coin mechanism is correct.

96. We also find that the Commission correctly found that a typical coinless payphone without a coin mechanism is similar to the 11A-type payphone. We further conclude that it is proper for us to use the cost of a 11A-type payphone in our current calculations underlying our default compensation amount. AT&T states that it has operated the 11A-type payphone in outdoor locations for many years and that it has a useful life of 10 years. We find that, based on AT&T's evidence and our own expertise, the 11A-type payphone would be materially similar to the coinless payphone that PSPs would purchase today.

e. Bad Debt.

97. In the Second Report and Order, the Commission found insufficient information on the record to account for the costs relating to bad debt. We conclude that the recent history of per-call compensation payments is not an accurate guide for future levels of bad debt. We do not know the percentage of uncollected per-call compensation that is due to billing errors of the PSPs, as opposed to unscrupulous carriers. We also note that the RBOC Coalition asks us to clarify our rules regarding the entity that is required to pay per-call compensation. Although we were unable to generate a sufficient record on this question before issuing this Order, parties may file a petition for clarification on this issue. It appears that if we were to grant such a petition, uncollectibles would be significantly reduced. An additional reason why we decline to establish a cost element for bad debt is that, in doing so, PSPs that ultimately recover their uncollectibles from delinquent carriers would then double-recover: once from the debtor and once from the consumer, i.e., through the cost element included in the compensation amount. Furthermore, as discussed below, we ensure that PSPs will receive interest on late payments for as long as such payments are overdue. For these reasons, we find that it would be unwise to establish a cost element for bad debt at this time. We note that, in a forthcoming order, we will determine the amount that IXCs owe PSPs for the period before October 7, 1997 and the way in which IXCs may recover overpayments that result from the default compensation amount established herein. If a petition for clarification is resolved prior to the adoption of our order addressing IXCs payments prior to October, 1997, we may visit the issue of uncollectibles in that order.

f. Dial-Around Collection Costs.

98. In the Second Report and Order, the Commission found insufficient information on the record to adjust the default compensation amount to account for billing and collection costs. On reconsideration, we find that the Commission's treatment of billing expenses was appropriate. We are still faced with insufficient information on the record to determine the extent to which administration costs vary when the number of coinless calls increases relative to coin calls. Given that both types of calls utilize specialized positions within a company, we find it fair to assume that the amount that coin-related SG&A positions contribute to SG&A expenses approximate the same expense that billing and collection positions contribute to SG&A. Finally, we find unpersuasive the RBOC Coalition's argument concerning the need for additional employees to perform duties related to administering per-call dial-around compensation. We note that, if the RBOC Coalition members were just now receiving compensation for local coin calls, as they are for dial-around calls, the RBOC Coalition also would be in the process of hiring employees for coin-related positions.

g. Components of the Cost Calculation.

(1) Payphone Capital Expense.

99. In the Second Report and Order, the Commission recognized the need for a PSP to recover depreciation costs and earn a return on its investment. The Commission concluded in the Second Report and Order that the record did not provide sufficient detail regarding the cost of capital. The Commission therefore estimated capital costs by examining the 1996 SEC form 10-K data for two non-LEC PSPs, CCI and Peoples Telephone. The Commission concluded that the amount of capital per new payphone, including the coin mechanism, was between $2,799 and $3,234. Upon reconsideration, we find that the cost of capital used in the Second Report and Order included some costs that are not necessary to run a payphone operation. Accordingly, we recalculate the cost of capital.

100. In the Second Report and Order, the Commission used the highest federal tax rate of 34 percent when calculating the levelized monthly payments that represent the monthly cost of an installed payphone. Although no party explicitly petitioned us for reconsideration on the tax rate, the record demonstrates that MCI used a tax rate of 39.25 percent in its payphone cost study, which accounted for state and local taxes, in addition to federal taxes. Upon reconsideration, we find that the Commission should have included state and local taxes in its calculation. Thus, we now use a tax rate of 39.25 percent to calculate the monthly payments that a payphone owner would make to pay for a payphone.

101. A working payphone unit consists of a payphone, enclosure, pedestal, associated spare parts, and other associated capital costs. We find above that the coin mechanism is not a joint and common cost. Because there is no credible information on the record indicating that the remainder of the costs associated with a payphone vary as the number of coin calls increases relative to coinless calls, however, we find that the remainder of the payphone unit is a joint and common cost. We estimate the capital cost of a payphone in three steps. We estimate the cost of a coinless payphone. We then estimate the cost of the rest of the payphone unit (e.g., the enclosure, pedestal, installation, and the associated parts) using data submitted by Davel and Peoples Telephone. We then calculate the monthly payments that would cover the costs of the payphone unit over a 10-year period, including taxes and interest. This payment is analogous to a mortgage payment, except that taxes are included in the calculation.

102. We conclude above that a coinless payphone is similar to the 11A-type payphone. AT&T states that the cost of a 11A-type coinless payphone is $225. The median estimates provided by Peoples Telephone and Davel for the remainder of the payphone unit (e.g., the enclosure, pedestal, installation, and the associated parts) is $1,362.50. Consistent with the Commission's determination in the Second Report and Order, we agree with AT&T that we should subtract the $60 of installation costs that are associated with the coin mechanism. We thus conclude that a coinless payphone unit costs $1,527.50. We find that $1,527.50 in capital costs amounts to a monthly payment of $28.04. We arrive at the $28.04 monthly figure by determining the monthly payments necessary to depreciate the $1,527.50 investment over ten years, while earning a return of 11.25 percent on net investment, and allowing for federal, state and local taxes at a rate of 39.25 percent.

(2) Line Charge Costs.

103. In the Second Report and Order, the Commission noted that PSPs pay LECs for payphone lines under a variety of tariffs that range from measured rates (e.g., per message or per minute) to flat,

monthly (i.e., unmeasured) rates. The Commission concluded that the average line cost for a coinless call ranged from $.065 to $.075 per call. The Commission calculated this cost by subtracting the average per-call measured service charges from the average line cost data reported by PSPs. AT&T avers that instead of subtracting the average measured service charge for all payphones, the Commission should have subtracted the average measured service charges for those phones that actually paid measured service charges. The RBOC Coalition argues that the Commission overstated the line savings of a coinless call.

104. In the *Second Report and Order*, the Commission found the data in the record to be insufficient to distinguish among these different types of costs. The RBOC Coalition subsequently submitted evidence demonstrating the correct calculation of the joint and common cost of the payphone line. In its calculation, the RBOC Coalition used the monthly line charge where only unlimited service was available, the fixed monthly charge where only measured service was available, and the fixed monthly charge associated with measured service where the PSP had the choice of unlimited service or measured service. The RBOC Coalition calculated a weighted average joint and common line cost based on the total number of payphones, including both BOC and independent payphones, in each member's territory. The national average joint and common line cost is $33.65.

(3) Maintenance Costs.

105. In the Second Report and Order, the Commission treated maintenance as a joint and common expense, but treated coin collection costs as attributable to coin calls. Upon reconsideration, we conclude that the Commission properly assigned maintenance costs as joint and common. Much of a payphone's maintenance is performed during regularly scheduled visits, meaning a technician will visit a payphone whether or not the payphone requires immediate maintenance. To the extent that maintenance is performed on a periodic basis, maintenance costs will change very little in response to an increasing number of coin calls. We conclude, therefore, that maintenance costs are properly designated as joint and common. In the Second Report and Order, the Commission found that maintenance costs, other than coin collection costs, ranged from $21.68 to $27.10 per month.

106. We find that the new SBC maintenance data submitted by the RBOC Coalition reasonably reflects the maintenance costs of SBC and probably other RBOCs, as well. We therefore create a weighted average of the SBC data and the Peoples Telephone data. We use the Peoples Telephone data to estimate the maintenance costs of a large non-LEC PSP, because it was the only data consisting of monthly cost figures that was submitted by a PSP. In addition, we find that the Peoples Telephone data provides the most detail regarding the number of maintenance visits and the portion of those visits that were strictly coin-related.

107. SBC estimates that monthly per-phone maintenance costs amount to $24.37. Peoples Telephone reports that maintenance costs amount to $41.66. Because most payphones are RBOC payphones, we calculate the weighted average as $30.49 per month. Peoples Telephone reports that 38 percent of its maintenance visits were strictly coin related. We therefore subtracted 38 percent of $30.49 ($11.59) to reflect coin collection costs and costs associated with maintenance of coin payphones. We thus conclude that a payphone owner spends $18.90 per payphone per month for maintenance.

(4) Sales, General, and Administrative Costs.

108. Payphone owners incur overhead costs, such as legal fees, administrative costs, salaries, and management costs, all commonly referred to as Sales, General, and Administrative (SG&A) costs. As the proportion of coin calls increases relative to coinless calls, some employees in the payphone company likely will assume more duties related to coin calls, rather than coinless calls. We find no credible evidence in the record that total SG&A costs change as the number of coin calls increases relative to coinless calls. We therefore conclude that SG&A is a joint and common cost that should be attributed to all types of calls.

109. In the Second Report and Order, the Commission concluded that per-call SG&A costs ranged from $28.80 to $29.27. Newly submitted data suggests that SG&A costs are lower, however. We find that the new SBC cost data, as supplemented by the RBOC Coalition, provides a reasonable estimate of the maintenance costs of an RBOC payphone operation. We also find that the Peoples Telephone data represents a reasonable estimate of a non-LEC payphone operation. The new data suggests that, on a per-phone, per-month basis, SG&A costs amount to $16.52 for RBOCs. In its comments submitted in 1997, Peoples Telephone suggested that SG&A amounted to $25.27. In the Second Report and Order, the Commission added $4.02 to SG&A costs to account for bad debt. Because we consider bad debt elsewhere in this Order, we do not add here the bad debt costs provided by Peoples Telephone. Because there are more RBOC Coalition payphones than independent payphones, we calculate a weighted average SG&A cost of $19.62 per month.

(5) Coding Digit Costs (FLEX ANI Costs).

110. In the Second Report and Order, the Commission added $.01 per call to the compensation amount to reflect the costs that PSPs must pay LECs for the implementation of FLEX ANI, a coding digit technology that allows IXCs to identify payphone-originated calls for per-call compensation purposes. Under the market-based methodology, the Commission determined that charges that recover FLEX ANI costs were joint and common costs attributed to all types of calls.

111. We based the $.01 FLEX ANI cost estimate, in part, on evidence filed by USTA, in which it stated that the costs associated with LECs providing coding digits would be $600 million. Subsequent to the adoption and release of the Second Report and Order, USTA filed a revised coding digit estimated cost of $61.2 million, prompting some parties to petition for reconsideration of our FLEX ANI cost estimate. In addition to the updated USTA information, many LECs have since filed their actual FLEX ANI tariffs, which establish with specificity the costs to be recovered in relation to FLEX ANI. In light of this new information, several parties have filed petitions requesting that our decision reflect the revised coding digit cost estimates.

112. Upon reconsideration, we find that our treatment of the coding digit costs in the Second Report and Order was correct. The coding digit rate element that LECs apply to each payphone line to recover the costs of FLEX ANI is not conditional on the amount of, or even the presence of, dial-around traffic. Most PSPs are required by state law to install payphones on payphone lines, where they are subject to the FLEX ANI cost recovery tariff. We therefore conclude that the coding digit rate element is an unavoidable cost of operating a payphone that does not vary as the number of coin calls increases relative to coinless calls. As such, we find that FLEX ANI costs are joint and common and should be attributed to all calls.

113. We adjust the default compensation amount to reflect the updated USTA coding digit cost estimate and the recently filed FLEX ANI tariffs. We find that the average

payphone owner would pay $1.08 per payphone line for 36 months because of FLEX ANI. We describe our calculation here. Pursuant to the *Coding Digit Waiver Order*, 63 FR 20534 (April 27, 1998), LECs may account for the recovery of the cost of implementing FLEX ANI over a variable length of time. The RBOC Coalition submitted data showing that several RBOCs chose to recover their FLEX ANI costs over a 24-month-period, while BellSouth chose to recover its costs over a 12-month-period. Because this Order establishes a three-year-period for default compensation payments, we find that the amount PSPs are paid for FLEX ANI should be calculated as if the RBOCs tariffed the FLEX ANI cost-recovery element for 36 months.

114. Using the data that the RBOC Coalition submitted, we calculate the present value of the payments that a payphone owner in each RBOC territory would pay. We then calculate the amount that a PSP would pay over a 36-month-period while maintaining the same present value of payments. We then calculate the weighted average of these payments based on the total number of payphones, including BOC and non-BOC payphones, in each BOC's territory. We conclude that the average PSP would pay $1.08 per month for 36 months, if that were how the LECs had decided to tariff their coding digit cost recovery elements.

(6) Interest.

115. In the Second Report and Order, the Commission found that, because payments are made several months after the dial-around call is made, PSPs should receive three months of interest calculated at 11.25 percent annually. The RBOC Coalition argues that although the Commission provided for three months of interest in the Second Report and Order, dial-around payments are actually made an average of at least four months after the call is completed. The RBOC Coalition therefore asks that we adjust our findings to reflect this difference.

116. We find that firms that expect a one-month delay before receiving payment will price their goods accordingly, with the interest already built into the quoted price. The calculations so far have not considered a built-in 30-day delay in payment. Further, at the time the *Second Report and Order* was released, the Commission anticipated a three-month delay, not a four-month delay, in receiving payments. In light of the average delay in payments of four months, we conclude that we should add to the compensation amount a total of four months of interest at 11.25 percent per year. The above default price will therefore be raised by $.009 to reflect four months of interest on the base amount of $.231. If IXCs are late in making their payments to PSPs, interest on the principal will continue to accrue at 11.25 percent per year.

(7) Marginal Cost of a Payphone Call.

117. As stated earlier, our pricing strategy seeks to establish a default amount for dial-around calls so that the calls recover their marginal cost plus a share of joint and common costs. There is no credible evidence on the record indicating that the process of picking up a handset and dialing numbers imparts any measurable costs to the PSP. To the extent that these costs exist, we find that they would be insignificant on a per call basis and are already accounted for in the depreciation and maintenance costs outlined above. We therefore conclude that we do not need to add an element for the marginal cost of a dial-around call.

(8) Default Compensation Amount.

118. The new default price for compensable calls is $.24. We arrived at this amount by adding the joint and common costs and dividing the sum of the joint and common costs by the number of calls at a marginal location. We then add to this number four months of interest at 11.25 percent. These calculations result in a default compensation amount of $.24.

(9) Top-down Calculation. 119. Although we decline in the Order to adopt a top-down methodology, we have performed a top-down calculation to validate that our bottom-up methodology is reasonable. Similarly, the Commission in the *Second Report and Order* undertook a bottom-up calculation to validate the reasonableness of a top-down methodology. In performing this calculation, we start with what commenters agree is the predominant local coin calling price in the United States, $.35. We subtract from this amount the cost of the coin mechanism, termination charges, and coin collection charges.

120. We find that the installation of a coin mechanism costs a PSP $17.02 per month. Dividing $17.02 by the 318 coin calls made at an average payphone location, we conclude that we would subtract $.054 for the coin mechanism. We would also subtract $.038 for local termination charges, and subtract $.036 for coin collection charges. We do not include coding digit cost recovery charges here because most PSPs are now paying these charges. Further, because FLEX ANI costs are joint and common, they are already reflected in the $.35 starting price. We thus conclude that, under this approach, the default amount, before interest, would be $.222. To this amount, we would add $.008 for interest, resulting in a total of $.23. Thus, using the same data with a top-down methodology, the default amount is within a penny of the default amount arrived at under our bottom-up approach. We believe this similarity supports the reasonableness of the default compensation amount we adopt in this Order.

121. In the Second Report and Order, the Commission concluded that a top-down approach yielded a default compensation amount of $.284 and the bottom-up approach yielded a default amount of $.264. We now conclude that a bottom-up approach yields a default amount of $.24, and a top-down approach yields a compensation amount of $.23. These differences arise from our use of the more accurate data submitted in conjunction with the petitions for review of the *Second Report and Order*. For instance, in the *Second Report and Order*, the Commission estimated that the capital cost of a coin payphone was between $2,799 and $3,234. In this Order, we estimate that the capital cost is between $2,387 and $2,523, based on the filings by PSPs. We also received better data regarding the average termination costs that a PSP incurs, from which we conclude that the proper estimate should be $.038, instead of $.0275. We also amend our estimate of maintenance costs, based on new LEC data. We also lower our estimate of FLEX ANI costs from $.01 to $.002, based on actual tariffs filed by RBOCs. Based on this new data and our decision to use a bottom-up approach, we conclude that the default compensation amount will be $.24.

3. Compensation for October 7, 1997 to Present

122. In deciding to remand, rather than vacate, the Second Report and Order, the Court explained that its decision was based, in part, on ''the clear understanding that if and when on remand the Commission establishes some different rate of fair compensation for coinless payphone calls, the Commission may order payphone service providers to refund to their customers any excess charges for coinless calls collected pursuant to the current [$.284] rate.'' The Court noted that the Commission has authority to order such refunds pursuant to section 4(1) of the Act, which authorizes the Commission to take such actions ''as may be necessary in the execution of its

functions,'' as well as pursuant to the provisions of section 276, which directs the Commission to ''take all actions necessary to promulgate regulations to insure fair compensation.''

123. We conclude that the current default compensation amount should apply, subject to the following minor adjustment, retroactively to the period between October 7, 1997 and the effective date of this Order (the October 1997 period). This Order, which sets a default compensation amount of $.24, establishes a cost element of $.002 to compensate PSPs for each dial-around call's share of FLEX ANI costs. As explained above, we find that, over the next three years, the $.002 cost element will fully compensate PSPs for each dial-around call's share of FLEX ANI costs. Therefore, in calculating the default compensation amount for the October 1997 period, we deduct the $.002 cost element from the default compensation amount established in this order. Thus, the default compensation amount for the October 1997 period, is $.238.

4. Method of IXC Overpayment Recovery

124. As noted above, PSPs will be obligated to refund overpayments for the October 1997 period. In addition, in an upcoming order, we will address the compensation amount for the period between November 7, 1996 and October 6, 1997 (Interim Period). In establishing a compensation amount for the Interim Period, we anticipate using as a starting point the default compensation amount established herein. We also anticipate adjusting the default compensation amount for the Interim Period to account for FLEX ANI costs and interest. The upcoming order also will address the method that IXCs should use to calculate payments owed PSPs.

125. This Order reduces the per-call compensation amount established in the Second Report and Order for the period of October 7, 1997 to the effective date of this Order. Accordingly, we address the way that IXCs which have made payments consistent with our prior order may recover this overpayment. We note that, because most IXCs already have collected money from their customers to cover the cost of compensating PSPs, the IXCs will not be substantially harmed by a delay in recovering their overpayment. At the same time, PSPs may be severely harmed if they are required to immediately refund substantial overpayment amounts to the IXCs. Indeed, most PSPs have not yet received the majority of their payments for the Interim Period and do not necessarily have the resources to issue refunds to the IXCs. We therefore conclude that IXCs may recover their overpayments to the PSPs at the same time as the PSPs receive payment from the IXCs for the Interim Period. In other words, when an IXC calculates the amount owed to each PSP for the Interim Period, it should deduct from that amount any overpayment that it made to that PSP. Just as IXCs will be required to compensate PSPs for interest on the money due the PSPs for the Interim Period, IXCs will be allowed to recoup interest for overpayments to the PSPs for the October 1997 Period. The same rate of interest shall apply for both the Interim Period and October 1997 Period. In the event that the amount the IXC overpaid is larger than the amount it owes to the PSP for the Interim Period, the IXC may deduct the remaining overpayment from future payments to PSPs.

126. We also note that IXCs have recovered from their customers the cost of compensating PSPs at a rate of $.284 per call. Although we do not require IXCs to issue refunds to their customers, we believe that doing so would serve the public interest. We therefore encourage IXCs to issue refunds to their customers and to notify their customers of any such refunds. We also encourage IXCs to publicly disclose the manner in which they utilize any such refunds from PSPs.

V. Procedural Matters

A. Final Paperwork Reduction Act Analysis

127. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104–13 and does not contain new and/or modified information collections subject to Office of Management and Budget review.

B. Supplemental Final Regulatory Flexibility Analysis

128. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM*. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The Commission conducted a Final Regulatory Flexibility Analysis (FRFA) in the *Second Report and Order*. The Commission's Supplemental Final Regulatory Flexibility Analysis (SFRFA) in this Order conforms to the RFA.

1. Need for, and Objectives of, the Reconsideration of the Second Report and Order

129. The objective of the rules adopted in this *Reconsideration of the Second Report and Order* is ''to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public.'' In this order, we adjust the per-call default rate for coinless calls that the Commission set in the Second Report and Order. We adjust the rate from $0.284 to $0.24, making the difference between the market-based local coin rate and the coinless per-call default rate $0.11, instead of $0.066. In doing so, the Commission is mindful of the balance that Congress struck between this goal of bringing the benefits of competition to consumers and its concern for the impact of the 1996 Telecommunications Act on small businesses.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

130. We received no comments in direct response to the FRFA in the *Second Report and Order*. In the IRFA, the Commission solicited comment on alternatives to our proposed rules that would minimize the potential impact on small entities, consistent with the objectives of this proceeding. At that time, the Commission received one comment on the potential impact on small business entities, which the Commission addressed in the FRFA in the Second Report and Order and considered in promulgating the rules in the Second Report and Order. We believe that our rules, as adopted in the Second Report and Order, and as modified in this Order increase the efficiency of, and minimize the burdens of, the compensation scheme to the benefit of all parties, including small entities.

3. Description and Estimate of the Number of Small Entities to which Rules Will Apply

131. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) is

independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-sprofit enterprise which is independently owned and operated and is not dominant in its field.'' As of 1992, there were approximately 275,800 small organizations nationwide. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,000 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns, of which 37,566 (96 percent) have populations of fewer than 50,000. The Census Bureau estimates that this ratio is basically accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rule change.

a. Common Carrier Services and Related Entities.

132. The most reliable source of information regarding the total numbers of certain common carriers and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the TRS. According to data in the most recent report, there are 3,459 interstate carriers. These carriers include, inter alia, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

133. The SBA has designated companies engaged in providing ''Radiotelephone Communications'' and ''Telephone Communications, Except Radiotelephone'' as small businesses if they employ no more than 1,500 employees. Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

134. Although some incumbent local exchange carriers (ILECs) may have no more than 1,500 employees, we do not believe that such entities should be considered small entities within the meaning of the RFA. These ILECs are either dominant in their field of operations or are not independently owned and operated. Therefore, by definition, they are not ''small entities'' or ''small business concerns'' under the RFA. Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass small ILECs. Out of an abundance of caution, however, we will separately consider small ILECs within this analysis. We will use the term ''small ILECs'' to refer to any ILECs that arguably might be defined by the SBA as ''small business concerns.''

135. Total Number of Telephone Companies Affected. The U.S. Bureau of the Census (''Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications services providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the rule change.

136. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies, except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the rule change.

137. Local Exchange Carriers. Neither the Commission nor the SBA has defined small local exchange carriers (LECs). The best available definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 1,371 carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees. Thus, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 providers of local exchange service are small entities or small ILECs that may be affected by the rule change.

138. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 143 carriers reported that they were engaged in the provision of interexchange services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees. Thus, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that may be affected by the rule changes herein.

139. Competitive Access Providers. Neither the Commission nor the SBA has developed a definition of small

entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 109 carriers reported that they were engaged in the provision of competitive access services. We do not have data specifying the number of these carriers that are not independently owned and operated or that have more than 1,500 employees. Thus, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by the rule changes herein.

140. Operator Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 27 carriers reported that they were engaged in the provision of operator services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 27 small entity operator service providers that may be affected by the rule changes herein.

141. Pay Telephone Operators. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 441 carriers reported that they were engaged in the provision of pay telephone services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 441 small entity pay telephone operators that may be affected by the rule changes herein.

142. Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 339 reported that they were engaged in the resale of telephone service. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by the rule changes herein.

143. Toll Free Service Subscribers. We voluntarily describe here toll free service subscribers, even though they are not affected by the rules adopted herein such that they are within the scope of our regulatory flexibilty analysis. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to toll free service subscribers. The most reliable source of information regarding the number of 800 service subscribers appears to be data the Commission collects on the toll free numbers in use. According to our most recent data, 6,987,063 800 numbers were in use at the end of 1995. Similarly, the most reliable source of information regarding the number of 888 service subscribers appears to be data the Commission collects on the 888 numbers in use. According to our most recent data, 2,014,059 888 numbers had been assigned at the end of 1996. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800 subscribers and fewer than 2,014,059 small entity 888 subscribers that may be affected by the rule changes herein. In response to the Consumer-Business Coalition's concerns about the effect that the compensation amount will have on small businesses that subscribe to toll free numbers, we find that small businesses that subscribe to toll free numbers are likely to benefit by our reduction of the compensation amount in this Order. In this Order, we reduce to $.24 the compensation amount that must be paid to payphone service providers for compensable calls.

b. Wireless and Commercial Mobile Service. 144. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

145. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

146. Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

147. This Order results in no additional filing requirements.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

148. In the Second Report and Order, we addressed steps taken to minimize the economic impact on small entities. In particular, we addressed the potential economic impact on small businesses

and small incumbent LECs from (1) the amount of compensation paid to PSPs, and (2) the administration of per-call compensation.

149. In this Order, we adjust the per-call default compensation amount from $0.284 to $.24. This downward adjustment means that PSPs, many of whom may be small business entities, will receive less call revenue from coinless calls than they might have received under the Second Report and Order. However, by this action, we ensure that PSPs are more likely receive ''fair compensation'' for subscriber 800 and access code calls. This measure also helps PSPs receive fair compensation for each and every completed call made from a payphone, as required by the Act.

150. The downward adjustment also means that IXCs, some of which may be small businesses, will have lower per-call payphone expenses than they would have under the Second Report and Order. Since many IXCs pass on this expense directly to their 800 subscribers, many of which are small businesses, the downward adjustment means that these entities will experience lower 800 subscriber expenses.

151. Like the comments to the Second Report and Order, several parties commented on alternatives to a market-based default rate, and on alternatives to the approach selected by the Commission in which IXCs are obligated to compensate PSPs for dial-around calls. The Commission has responded to these comments.

152. Some of these commenters also charge that the Commission's approach is significantly increasing the cost of the many small businesses and public interest ''hot lines'' that depend on affordable 800 call rates. Our rules do not require IXCs to pass on the expense of payphone dial-around call compensation, but neither do our rules prohibit this. The Commission rejected proposals that IXCs be restricted from passing on the per-call costs to at least some 800 subscribers. We reiterate that IXCs should be given maximum flexibility to determine what, if any, per-call costs are passed on to their 800 subscribers.

153. Report to Congress. The Commission will send a copy of this Order, including this SFRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). A copy of this Order and SFRFA, or summary thereof, will be published in the **Federal Register**, *see* 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Conclusion

154. We conclude that the default price for coinless calls should be adjusted from $.284 to $.24. In addition, we note that PSPs will not be compensated for 911 and TRS calls.

155. In setting the default compensation amount, we shift to a cost-based method from the market-based method used in the Second Report and Order because of technological impediments that currently inhibit the market as well as the present unreliability of certain assumptions underlying the market-based method. In setting the cost-based default amount, we incorporated our reconsideration of our prior treatment of certain payphone costs as well as our examination of new estimates of payphone costs submitted as part of this proceeding.

156. The $.24 default price will be the price that, beginning thirty days after this order is published in the **Federal Register**, IXCs must compensate PSPs for all coinless payphone calls not otherwise compensated pursuant to contract, or advance consumer payment, including subscriber 800 and access code calls, certain 0+ and certain inmate calls. The $.24 price will serve as the default per-call compensation price for coinless payphone calls through January 31, 2002. At the conclusion of the three year period, if parties have not invested the time, capital, and effort necessary to move these issues to a market-based resolution, parties may petition the Commission regarding the default amount, related issues pursuant to technological advances, and the expected resultant market changes.

157. We conclude that the default price, adjusted for certain items, should be effective retroactive to October 7, 1997, and that IXCs will recover their overpayments to PSPs by deducting the amount of their overpayments, along with interest, from the payments the IXCs will make to PSPs for calls made during the November 7, 1996 to October 6, 1997 period.

VII. Ordering Clauses

158. Accordingly, pursuant to authority contained in Sections 1, 4, 201–205, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 215, 218, 219, 220, 226, and 276, *it is ordered* that the policies, rules, and requirements set forth herein *are adopted*.

159. *It is further ordered* that this order is effective April 21, 1999.

160. *It is further Ordered*, that 47 CFR Part 64 is amended as set forth in Appendix A, effective April 21, 1999.

161. *It is further Ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Third Report and Order* and *Order on Reconsideration of the Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

162. *It is further Ordered* that the July 14, 1998 Motion of Telecommunications Resellers Association to accept late-filed pleading *is granted*.

List of Subjects in 47 CFR Part 64

Communications common carriers, Operator service access, Payphone compensation, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended: 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 276, 48 Stat. 1070, as amended; 47 U.S.C. 201, 218, 226, 228, 276 unless otherwise noted.

2. Amend § 64.1300 by removing paragraph (d) and by revising paragraph (c) to read as follows:

§ 64.1300 Payphone compensation obligation.

* * * * *

(c) In the absence of an agreement as required by paragraph (a) of this section, the carrier is obligated to compensate the payphone service provider at a per-call rate of $.24.

[FR Doc. 99–6944 Filed 3–19–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–234; RM–9324]

Radio Broadcasting Services; Augusta, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 268C3 to Augusta, Wisconsin, in response to a petition filed by L. Topaz Enterprises, Inc. *See* 63 FR 71412, December 28, 1998. The coordinates for Channel 268C3 at Augusta, Wisconsin, are 44–40–11 NL and 90–57–55 WL. There is a site restriction 12.3 kilometers (7.7 miles) east of the community. With this action, this proceeding is terminated. A filing window for Channel 268C3 at Augusta, Wisconsin, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addresed by the Commission in a subsequent order.

EFFECTIVE DATE: April 26, 1999.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–234, adopted March 3, 1999, and released March 12, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

47 CFR PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Augusta, Channel 268C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–6869 Filed 3–19–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–50, MM Docket No. 98–75; RM–9247, RM–9264]

Radio Broadcasting Services; Healdton and Pauls Valley, OK and Krum, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, in a consolidated proceeding, substitutes Channel 229C3 for Channel 229C2 at Healdton, OK, reallots Channel 229C3 from Healdton to Krum, TX, as the community's first local aural transmission service, and modifies the license of Station KICM accordingly, at the request of AM & PM Broadcasters, LLC. *See* 63 FR 19699, April 21, 1998. At the request of AM & PM Communications, LLC, the Commission reallots Channel 249C3 from Pauls Valley, OK to Healdton, OK, as the community's first local aural transmission service. *See* 63 FR 34622, June 25, 1998. Channel 229C3 can be allotted to Krum with a site restriction of 22.3 kilometers (13.9 miles) northeast, at coordinates 33–26–34 NL; 97–08–08 WL, to accommodate petitioner's desired transmitter site. Channel 249C3 can be allotted to Healdton with a site restriction of 6.6 kilometers (4.1 miles) north, at coordinates 34–17–28 NL; 97–29–23 WL, to accommodate petitioner's desired transmitter site. With this action, this proceeding is terminated.

DATES: Effective April 26, 1999.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket Nos. 98–50, 98–75, adopted March 3, 1999, and released March 12, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

47 CFR PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 229C2 and adding Channel 249C3 at Healdton and removing Channel 249C3 at Pauls Valley.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Krum, Channel 229C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–6870 Filed 3–19–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–236; RM–9344]

Radio Broadcasting Services; Knox City, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 297A to Knox City, Texas, in response to a petition filed by Alalatex Broadcasters. *See* 63 FR 71412, December 28, 1998. The coordinates for Channel 297A at Knox City, Texas, are 33–25–03 NL and 99–40–16 WL. With this action, this proceeding is terminated. A filing window for Channel 297A at Knox City, Texas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addresed by the Commission in a subsequent order.

EFFECTIVE DATE: April 26, 1999.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–236, adopted March 3, 1999, and released March 12, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th

Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

47 CFR PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Knox City, Channel 297A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–6871 Filed 3–19–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications,* 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: March 22, 1999.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted February 24, 1999, and released March 5, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 290C3 and adding Channel 290C2 at Paradise Valley.

3. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 295A and adding Channel 295C3 at Gurdon.[1]

4. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 280C1 and adding Channel 280C2 at Pueblo West.[2]

5. Section 73.202(b), the Table of FM Allotments under Georgia is amended by removing Channel 298A and adding Channel 298C3 at Roswell.

6. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by removing Channel 231A and adding Channel 233A at Loogootee.

7. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 289A and adding Channel 289C3 at Manchester.

8. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 258A and adding Channel 257C3 at Ruston.

9. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 270A and adding Channel 270C2 at Negaunee.

10. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 232A and adding Channel 232C3 at Corinth.

11. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 266A and adding Channel 266C3 at White Rock.

12. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by removing Channel 280A and adding Channel 281C1 at Tioga.

13. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 276C3 and adding Channel 276C2 at Enid.

14. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 237C3 and adding Channel 237A at Baker.

15. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by removing Channel 240A and adding Channel 239A at Lewistown.

16. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 276A and adding Channel 276C1 at Ballinger, removing Channel 292C3 and adding Channel 292C2 at Hereford, removing Channel 239A and adding Channel 239C3 at Jourdanton and removing Channel 276A and adding Channel 276C3 at Pittsburg.

17. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 286C2 and adding Channel 286C at Tremonton.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–6874 Filed 3–19–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–149; RM–9331]

Radio Broadcasting Services; Long Beach and Shallotte, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Morfield, L.L.C., reallots Channel 252C3 from Shallotte to Long Beach, NC, as the community's first local aural service, and modifies the construction permit of Station WAZO(FM) to specify Long Beach instead of Shallotte as its community of license. See 63 FR 44600, August 20, 1998. Channel 252C3 can be allotted to Long Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.6 kilometers (7.2 miles) east, at coordinates 33–56–49 NL; 78–

[1] The *Report and Order* in MM docket 98–40, substituted Channel 295A for Channel 224A at Gurdon, Arkansas, and modified the construction permit for Station KYXK to specify operation on Channel 295A. *See* 63 FR 36191, July 2, 1998.

[2] The *Report and Order* in MM Docket No. 96–232 substituted Channel 280C1 for Channel 283C2 at Pueblo, Colorado, and reallotted Channel 280C1 from Pueblo, Colorado, to Pueblo West, Colorado. *See* 63 FR 3832, January 27, 1998.

00–04 WL, to accommodate petitioner's desired transmitter site. With this action, this proceeding is terminated.

DATES: Effective April 26, 1999.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–149, adopted March 3, 1999, and released March 12, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 252C3 at Shallotte and adding Long Beach, Channel 252C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–6875 Filed 3–19–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–165; RM–9322]

Radio Broadcasting Services; Refugio, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 263A to Refugio, Texas, in response to a petition filed by WAB Broadcasting. See 63 FR 49683, September 17, 1998. The coordinates for Channel 263A at Refugio are 28–21–00 NL and 97–16–30 WL. There is a site restriction 5 kilometers (3.1 miles) north of the community. Since Refugio is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican Government has been obtained for this allotment. With this action, this proceeding is terminated. A filing window for Channel 263A at Refugio will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: April 26, 1999.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–165, adopted March 3, 1999, and released March 12, 1999. The full test of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1219 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 263A at Refugio.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–6876 Filed 3–19–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–235; RM–9379]

Radio Broadcasting Services; West Tisbury, MA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 282A to West Tisbury, Massachusetts, in response to a petition filed by Oasis Financial Corporation. See 63 FR 71413, December 28, 1998. The coordinates for Channel 282A at West Tisbury are 41–22–52 NL and 70–40–30 WL. With this action, this proceeding is terminated. A filing window for Channel 282A at West Tisbury will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addresed by the Commission in a subsequent order.

EFFECTIVE DATE: April 26, 1999.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–235, adopted March 3, 1999, and released March 12, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is adding West Tisbury, Channel 282A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–6877 Filed 3–19–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–233; RM–9316]

Radio Broadcasting Services; Manhattan, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 289A to Manhattan, Montana, in response to a petition filed by Manhattan Broadcasting Company. *See* 63 FR 71413, December 28, 1998. The coordinates for Channel 289A at Manhattan, Montana, are 45–51–12 NL and 111–19–42 WL. With this action, this proceeding is terminated. A filing window for Channel 289A at Manhattan, Montana, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addresed by the Commission in a subsequent order.

EFFECTIVE DATE: April 26, 1999.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–233, adopted March 3, 1999, and released March 12, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Manhattan, Channel 289A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–6878 Filed 3–19–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–70; RM–9276]

Radio Broadcasting Services; Clinton and Okarche, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Tyler Broadcasting Corporation, substitutes Channel 294C2 for Channel 294C1 at Clinton, OK, reallots Channel 294C2 to Okarche, OK, as the community's first local aural service and modifies Station KCLI–FM's license to specify Okarche instead of Clinton as its community of license. *See* 63 FR 36387, July 6, 1998. Channel 294C2 can be allotted to Okarche in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.8 kilometers (1.7 miles) east, at coordinates 35–43–08 North Latitude; 98–00–09 West Longitude, to accommodate petitioner's desired transmitter site. With this action, this proceeding is terminated.

DATES: Effective April 19, 1999.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–70, adopted February 24, 1999, and released March 5, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 295C1 at Clinton and by adding Okarche, Channel 294C2.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–6879 Filed 3–19–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 031599A]

Fisheries of the Exclusive Economic Zone Off Alaska; Fishery Cooperatives

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

ACTION: Final rule; notice of availability of fishery cooperative contracts.

SUMMARY: NMFS announces the availability of two fishery cooperative contracts under the American Fisheries Act (AFA). The Pollock Conservation Cooperative and the Offshore Pollock Catcher Cooperative filed membership agreements (agreements) with the North Pacific Fishery Management Council (Council) and the Secretary of Commerce (Secretary) under section 210(a) of the AFA. This notification is intended to promote public awareness of the agreements and is necessary to comply with the AFA requirement to make public information about the agreements.

ADDRESSES: Copies of the Agreement may be requested in writing from (1) Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Sustainable Fisheries Division, Alaska Region, NMFS, 709 West 9th Street, Room 401, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori Gravel, or from (2) Clarence Pautzke, Executive Director, North Pacific Fishery Management

Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228.

SUPPLEMENTARY INFORMATION: Section 210 of the AFA specifically provides for fishery cooperatives under section 1 of 15 U.S.C. 521 *et seq*. (June 25, 1934), for purposes of harvesting and processing pollock (*Theragra chalcogramma*) caught in the Bering Sea and Aleutian Islands area. Any contract implementing a fishery cooperative under this authority is required to meet certain minimal criteria (section 210(a)(1)). These criteria include filing the contract, and any material modifications to the contract, with the Council and the Secretary not less than 30 days prior to the start of fishing under the contract. Additional criteria include public disclosure of certain information about the contract or the fishery cooperative and its harvest. Specifically, the Council and the Secretary are required to make available to the public information they deem appropriate but which at a minimum will include:

1. A list of the parties to the contract, a list of the vessels involved, and the amount of pollock and other fish to be harvested by each party to the contract; and

2. The harvest by vessels under the cooperative contract of all species (including bycatch) in the directed pollock fishery on a vessel-by-vessel basis.

Both agreements were filed or submitted to the Chairman of the Council and the Secretary on December 20, 1998. On January 20, 1999, the Council and NMFS received copies of a ''housekeeping'' amendment to the Offshore Pollock Catcher Cooperative membership agreement. The Pollock Conservation Cooperative membership agreement lists nine members, the percentage of the annual directed pollock fishery allowance for each member, and 20 participating vessels. The 20 listed vessels are the same catcher/processors listed at section 208(e) of the AFA. The Offshore Pollock Catcher Cooperative membership agreement lists seven members, the percentage of the annual directed pollock fishery allowance for each member, and the seven participating catcher vessels named at section 208(b) of the AFA.

NMFS announces the availability of both agreements (see **ADDRESSES**). Both agreements and the amendment were made available to the public during the Council meetings February 1 through 8, 1999. The actual harvest of each vessel operating under each agreement will be made available at the conclusion of the fishing year.

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

Dated: March 16, 1999.

Gary C. Matlock,

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

[FR Doc. 99–6925 Filed 3–19–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 54
Monday, March 22, 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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Methods of Withdrawing Funds From the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing a proposed amendment to the Board's withdrawal regulations. Under the proposed amendment, if a participant does not withdraw his or her Thrift Savings Plan (TSP) account in a timely manner, the account will be forfeited. The account will be restored if the participant complies with the withdrawal requirements.

DATES: Comments must be received on or before May 21, 1999.

ADDRESSES: Comments may be sent to Patrick J. Forrest, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest, (202) 942–1662.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99–335, 100 Stat. 514. The provisions governing the TSP are codified primarily in subchapters III and VII of Chapter 84 of Title 5, United States Code (1994). The TSP is a tax-deferred retirement savings plan for Federal employees which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a participant's TSP account are held in trust for the participant. 5 U.S.C. 8437(g).

The deadline for a participant to withdraw or begin withdrawing his or her account is governed by 5 U.S.C. 8433. Under section 8433(f), this deadline is April 1 of the year following the later of the year in which the participant turns age 70½ or the year in which the participant separates from Government employment.

Final regulations governing the deadline for withdrawing a TSP account were published in the **Federal Register** on September 18, 1997 (62 FR 49113). These regulations do not address the action the Board will take if a participant fails to comply with the withdrawal deadline.

Under the proposed amendment, whenever a participant does not comply with the withdrawal deadline, the Board will transfer all of the funds in his or her account to the Government Securities Investment Fund (G Fund) that are not already invested in that Fund. The participant will be sent a notice of this action and informed that the account will be declared abandoned and forfeited unless the participant takes the appropriate withdrawal action within 90 days of the date of notice. Forfeiture is necessary because participants who have not taken timely action to withdraw their accounts are no longer eligible to have a TSP account.

If, at a later time, a participant reclaims the TSP account and a proper withdrawal election has been received, the Board will restore the funds to the account and authorize the withdrawal. The amount the participant may withdraw is the amount of funds in the account at the time the Board declared it to be abandoned and forfeited. No earnings will be paid on these funds during the forfeiture period.

If the participant reclaims the account balance, but decides not to take a lump sum or monthly payments withdrawal, the Board will purchase an annuity for the participant after it has received the necessary information from him or her. The option of electing an annuity is not available for TSP accounts of $3,500 or less. Those accounts will be paid in accordance with § 1650.22.

Regulatory Flexibility Act

I certify that this amendment will not have a significant economic impact on a substantial number of small entities. It will affect only TSP participants and beneficiaries.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, section 201, Pub. L. 104–4, 109 Stat. 48, 64, the effect of these regulations on State, local, and tribal governments, and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, and tribal governments in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

List of Subjects in 5 CFR Part 1650

Employee benefit plans, Government employees, Pensions, Retirement.

Dated: March 12, 1999.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set forth in the preamble, part 1650 of chapter VI of title 5 of the Code of Federal Regulations is amended as follows:

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

1. The authority citation for part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8474(b)(5), and 8474(c)(1).

2. Section 1650.15 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 1650.15 Required withdrawal date.

* * * * *

(c) In the event that a participant does not withdraw his or her account or begin receiving payments in accordance with paragraph (a) of this section, the Board will transfer all of the funds in the participant's account not already invested in the Government Securities Investment Fund (G Fund) to that Fund. A notice of this action will be sent to the participant with a warning that his or her account will be declared abandoned and forfeited unless the participant comes into compliance with paragraph (a) of this section within 90 days of the date of the notice.

(d) If the participant does not take the appropriate withdrawal action within

the 90 day period provided in paragraph (c) of this section, the Board will purchase an annuity for the participant after the following steps have been taken:

(1) The account has been declared abandoned and the funds in the account have been forfeited;

(2) A notice of this action has been sent to the participant;

(3) The participant reclaims the account balance that was abandoned, but decides against a withdrawal pursuant to §§ 1650.10 or 1650.11; and

(4) The participant provides the information that the Board needs to purchase an annuity pursuant to § 1650.12.

[FR Doc. 99–6757 Filed 3–19–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71 and 80

[Docket No. 98–037–1]

Johne's Disease in Domestic Animals; Interstate Movement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing several changes to the regulations regarding the interstate movement of domestic animals that have reacted to a test for paratuberculosis. First, we are proposing to replace all references to ''paratuberculosis'' with references to ''Johne's disease'' to reflect a change in nomenclature. Second, we are proposing to identify an official test for the detection of Johne's disease in domestic animals. Third, we are proposing to allow sexually intact animals that are positive to the official Johne's disease test to be moved interstate for the collection of germ plasm. Fourth, we are proposing to amend the requirements for moving animals interstate. These actions would update the regulations and remove restrictions on the interstate movement of animals that are positive to an official Johne's disease test that do not appear necessary to prevent the interstate spread of Johne's disease.

DATES: Consideration will be given only to comments received on or before May 21, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–037–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–037–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph S. VanTiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–7716.

SUPPLEMENTARY INFORMATION:

Background

Paratuberculosis, also known as Johne's disease, is a disease caused by *Mycobacterium paratuberculosis.* This disease primarily affects cattle, sheep, goats, and other domestic, exotic, and wild ruminants. Paratuberculosis is a chronic and contagious enteritis that results in progressive wasting and eventual death. Clinical signs are rarely evident until 2 or 3 years after the initial infection, which usually occurs soon after birth. The organism is shed in large numbers in the feces of infected animals, and infection can be acquired by ingestion of organisms from contaminated food and water sources. The organism can also be present in colostrum and milk of infected cows. The disease is nearly always introduced into a clean herd by an infected animal that does not show symptoms of the disease. Our regulations are intended to control the interstate spread of the disease in the United States.

The regulations in subchapter C of chapter I, title 9, Code of Federal Regulations, govern the interstate movement of animals to prevent the dissemination of livestock and poultry diseases in the United States. Parts 71 and 80 (referred to below as the regulations) are included in subchapter C. Part 71 relates to the interstate transportation of animals, poultry, and animal products. Part 80 pertains to the interstate movement of domestic animals that are paratuberculosis reactors. A paratuberculosis reactor is a domestic animal that has reacted to a test recognized by the Secretary of Agriculture for paratuberculosis.

In this document, we are proposing several changes to the regulations regarding the interstate movement of domestic animals affected with paratuberculosis.

Paratuberculosis

We are proposing to amend the regulations in parts 71 and 80 by replacing all references to ''paratuberculosis'' with references to ''Johne's disease'' to reflect a change in nomenclature. Since the regulations were first promulgated, accepted veterinary medical terminology has changed. Paratuberculosis is now generally referred to as Johne's disease. In this proposed rule, we will use the term ''Johne's disease'' when referring to ''paratuberculosis,'' as appropriate.

Definitions (§ 80.1)

The proposed changes to part 80 of the regulations would make it necessary for us to add definitions in § 80.1 for several terms used in the proposed regulations. We are proposing to add definitions for *Administrator, Animal and Plant Health Inspection Service (APHIS), APHIS representative, approved livestock facility, area veterinarian in charge, official eartag, owner-shipper statement, permit, premises identification number, premises of origin, recognized slaughtering establishment, State animal health official,* and *State representative.*

We are also proposing to add three definitions that are not currently defined or used elsewhere in subchapter C. *Germ plasm* would be defined as semen, embryos or ova. *Johne's disease* would be defined as an infectious and communicable disease that primarily affects cattle, sheep, goats, and other domestic, exotic, and wild ruminants, also known as paratuberculosis, caused by *Mycobacterium paratuberculosis.* The proposed definition for *official Johne's disease test,* the third definition we would add, is discussed later in this document.

We are also proposing to update the definitions of *accredited veterinarian, moved,* and *State* in § 80.1 to make them consistent with the definitions of these terms found in other parts of chapter I, title 9, Code of Federal Regulations.

We are also proposing to remove several terms from § 80.1 that would no longer be used in part 80. Specifically, we would remove the terms *paratuberculosis, Federal inspector, person, specifically approved stockyard,* and *State inspector.* As explained earlier, *paratuberculosis* would be replaced by *Johne's disease. Federal inspector* would be replaced by *APHIS representative; person* would no longer be used; *specifically approved stockyard* would be replaced with *approved*

livestock facility; and *State inspector* would be replaced by *State representative.*

In addition, we are proposing to amend § 80.1 by removing the paragraph designations and placing all definitions in alphabetical order.

Official Johne's Disease Test

We are proposing to identify an official test for the detection of domestic animals that are infected with *M. paratuberculosis.* Currently, part 80 restricts the interstate movement of domestic animals that have reacted to a test for Johne's disease. However, the regulations do not identify a specific test. As a consequence, State and Federal diagnostic laboratories have used various diagnostic tests to diagnose Johne's disease in animals.

There are a number of tests currently used to diagnose Johne's disease. Antibody detection tests, such as the enzyme-linked immunosorbent assay, agar gel immunodiffusion, and complement fixation, detect the presence of antibodies to *M. paratuberculosis* in serum samples. Organism detection tests, such as fecal culture or polymerase chain reaction (PCR), detect the presence of the *M. paratuberculosis* organism in fecal samples. Most antibody detection tests are more rapid or less expensive than organism detection tests. However, at this time, we believe that an organism detection test would be the most specific and most reliable index of infection in live animals.

We are, therefore, proposing to amend § 80.1 to add a definition for the term *official Johne's disease test.* An organism detection test would be the official Johne's disease test. We would require the test to be conducted in an approved laboratory [1]. The Administrator of the Animal and Plant Health Inspection Service (APHIS) would approve a laboratory to conduct the official Johne's disease test after determining that the laboratory meets the check test proficiency requirements prescribed by the National Veterinary Services Laboratories. Approval would continue as long as such check test proficiency requirements are met on an annual basis. If the laboratory fails to pass the check test proficiency requirements, the laboratory would be removed from the list of approved laboratories for the type of test that it failed. For example, if a laboratory is approved for performing fecal culture and PCR testing, but during the annual recheck of its proficiency, the laboratory passed the fecal culture check test proficiency requirements and failed the PCR check test proficiency requirements, the laboratory would remain on the approved list of laboratories for the fecal culture test but would be removed from the approved list of laboratories for PCR.

We would refer to animals identified as having Johne's disease on the basis of an organism detection test as animals ''positive to the official Johne's disease test,'' rather than as ''reactors.'' An animal that reacts to a test can either be infected with the organism being detected or show a reaction due to the presence of an element in the test sample collected from the animal that is cross reacting in the test. For some diagnostic tests, ''reactor''is an appropriate term because some of these tests detect the presence of antibody against an organism. An animal may have antibodies to other organisms that cross-react with antigens in the test, and the result may appear as a reaction. However, the organism detection test will detect the presence of the M. *paratuberculosis* organism; therefore, ''positive to'' is a more appropriate term than ''reactor.''

Interstate Movement of Domestic Animals Positive to the Official Johne's Disease Test

Currently, § 80.4 provides that cattle and other domestic animals that have reacted to a test for Johne's disease may only be moved interstate to a recognized slaughtering establishment or to a specifically approved stockyard for sale to a recognized slaughter establishment. Prior to movement, cattle and other domestic animals must be identified with an approved metal eartag that is attached to their left ear and bears a serial number and the inscription, ''U.S. Reactor,'' or a similar State reactor tag. Cattle must also be: (1) Branded with the letter ''J'' on their left hip near the tailhead; or (2) accompanied directly to slaughter by an APHIS or State representative; or (3) moved in vehicles closed with official seals that are applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

We are proposing a number of changes to § 80.4 regarding the interstate movement of animals. First, we are proposing to require the use of an official eartag to identify animals that are positive to the official Johne's disease test and remove the requirement for a ''U.S. Reactor'' inscribed eartag. We believe that it is sufficient to identify these animals with an official eartag, since an official eartag can be used to trace the animals to their premises of origin, even if they are separated from their accompanying documentation.

Second, we are proposing to remove the requirement that cattle be branded, accompanied by an APHIS or State representative, or transported in sealed vehicles. When § 80.4 of the regulations was promulgated, Johne's disease was an emerging disease in the United States, and measures were instituted to clearly identify infected animals. We believe that it is no longer necessary to require measures, such as branding, that overtly identify cattle as infected with M. *paratuberculosis.* Also, herd owners must often wait 1 to 5 days for APHIS or State personnel to be available to brand the animals, seal the trucks, or accompany the shipment of animals to their destination. By removing these requirements, herd owners would be able to remove infected animals from their premises sooner and decrease the possibility of these animals infecting other animals on the premises.

Third, we are proposing to remove the requirement that cattle and other domestic animals that are reactors to a test for Johne's disease be accompanied by a certificate issued by a Federal or State inspector or an accredited veterinarian in accordance with § 80.9. Currently, the certificate must show: (1) The animals have reacted to the test; (2) the reactor tag number for each animal, the owner, and the date tested; (3) the authorization for movement; (4) the destination; and (5) the purpose for movement. Instead of a certificate, we propose to require that an owner-shipper statement accompany animals that are positive to the official Johne's disease test. Unlike a certificate, an owner-shipper statement can be completed by the owner or shipper of the animals. This would enable herd owners to ship animals sooner than they could if they had to wait for government personnel to issue a certificate. The owner-shipper statement would be required for the interstate movement to slaughter of animals that are positive to the official Johne's disease test. We would require the owner-shipper statement to provide: (1) The number of animals to be moved; (2) the official eartag number of each animal; (3) the species of the animals; (4) the points of origin and destination; (5) the consignor and consignee; (6) a statement that the animals are positive to the official Johne's disease test; and (7) any additional information required by part 80.

[1] A list of currently approved laboratories and the requirements for approval are available from the Diagnostic Bacteriology Laboratory, National Veterinary Services Laboratories, P.O. Box 844, Ames, Iowa 50010.

Finally, we are proposing to allow sexually intact animals that are positive to the official Johne's disease test to be moved interstate for the collection of germ plasm under certain conditions.

Johne's disease primarily affects the intestinal system of infected animals. The primary mode of transmission is the shedding of the organism in feces. Animals become infected when they ingest contaminated food or water. The agent can also be shed in milk or colostrum of some infected cows, and calves may become infected by ingesting this milk and/or colostrum. Although Johne's disease is not primarily recognized as a sexually transmitted disease, the organism has been isolated from the genitalia and semen of infected bulls and the uterine washings of infected cows. The role that herd bulls used in natural service play in the spread of infection is unknown, and the risk from infected semen used for artificial insemination is considered minimal. Research has shown that calves born to infected cows can become infected in utero; however, it is unknown at what stage this occurs. The *M. paratuberculosis* organism can adhere to embryos in vitro but can be removed with trypsin washing techniques following the International Embryo Transfer Association collection and treatment protocols. Embryo transfer from infected cows has rarely resulted in infected calves and is not known to have caused infection in the recipient cow. (Embryo transfer is the removal of embryos from the uterus of their dam (the donor) and transferring them to the uterus of other females (recipients) for development to term.)

Currently, animals that react to a test for Johne's disease may not be moved interstate for either natural breeding or germ plasm collection. The transmission of infection from these animals via semen or embryos is not considered a significant risk. By allowing the interstate movement of positive animals for the collection of germ plasm, we would allow herd owners to salvage valuable genetics and continue the animal's lineage.

We would provide herd owners with the option of having the animals returned to the premises of origin after the collection of germ plasm. These animals could then be maintained in a manner to prevent the spread of infection via manure. However, if the animals are not returned to their premises of origin after the collection of germ plasm, we would require these animals to be moved directly to a recognized slaughtering establishment or to an approved livestock facility for sale to a recognized slaughtering establishment.

We are proposing to require that animals moved interstate for the collection of germ plasm be transported under permit. The permit would be an official document (Veterinary Services Form 1–27, Permit for Movement of Restricted Animals, or a State form that contains the same information but not a ''permit for entry'') issued at the point of origin by an APHIS or State representative or accredited veterinarian for the interstate movement of the animals. The permit would have to indicate: (1) The number of animals to be moved; (2) the purpose of the movement; (3) a statement that the animals are positive to the official Johne's disease test; (4) the official eartag number of each animal; (5) the animals' breed and sex; (6) the name of the owner of the animals; (7) the points of origin and destination; (8) the consignor and consignee; and (9) the transportation vehicle number or other identification number. We would require a permit to ensure that APHIS or State officials are aware of the interstate movement of the animals for purposes other than slaughter. We would also require the movement to be agreed upon by the area veterinarian in charge and the State animal health official of the States of origin and destination. In addition, for the return of animals to the premises of origin from the site of the collection of germ plasm, we would require a new permit. The issuance of a new permit would help ensure that the State officials are aware of the return of the animals to the premises of origin. However, if the animals are to be transported directly to a recognized slaughtering establishment or to an approved livestock facility for sale to a recognized slaughtering establishment after the collection of germ plasm, their movement would require an owner-shipper statement as previously described.

Related Changes

Currently, § 71.3(c)(1) allows domestic animals that have reacted to a test for brucellosis or paratuberculosis to be moved interstate in accordance with the provisions of parts 78 and 80, respectively. For clarity, we believe that brucellosis and Johne's disease should be addressed in separate paragraphs. We are proposing to remove all references to paratuberculosis in paragraph (c)(1) and add a new paragraph to address Johne's disease. The new paragraph would provide that domestic animals that are positive to the official Johne's disease test, but are not affected with any other disease referred to in § 71.2 and are not tick infested, may be moved interstate in accordance with part 80.

In addition, paragraph (c)(1) refers to domestic animals that have reacted to a test recognized by the Secretary of Agriculture for brucellosis. For consistency with the terminology used in part 78, we are proposing to amend paragraph (c)(1) to refer to domestic animals that have reacted to an official test for brucellosis.

Currently, § 80.3 provides that domestic animals affected with Johne's disease may not be moved interstate except in compliance with the regulations in part 80. We are proposing to amend § 80.3 to replace the term ''affected'' with ''positive to the official Johne's disease test.''

Currently, § 80.8 provides that domestic animals that are paratuberculosis reactors cannot be moved interstate in a vehicle that contains healthy animals susceptible to Johne's disease unless all of the animals are for immediate slaughter or the reactors are kept separated from the other animals by a partition that is securely affixed to the sides of the vehicle. We are proposing to require that the partition also prevent the transfer of fecal matter from the infected animals to the healthy animals in the vehicle.

Provisions We Propose To Remove From Part 80

Section 80.2 of the regulations states that on June 5, 1952, the Secretary of Agriculture issued a notice that paratuberculosis exists in Puerto Rico and all but six States of the United States. This historical information is superfluous. Therefore, we believe that this section is no longer necessary and propose to remove § 80.2 in its entirety.

Section 80.5 of the regulations sets forth conditions for the interstate shipment of purebred animals that have been moved interstate for breeding purposes and, subsequent to the movement, reacted to a test for paratuberculosis. Section 80.5 provides that these animals may be shipped to their point of origin, for purposes other than immediate slaughter, in accordance with §§ 80.5 and 80.4 (a) and (b). Section 80.5 also provides that, after their return to the point of origin, these animals cannot be moved interstate again except for immediate slaughter. As stated previously, we are proposing to amend § 80.4 to allow animals that are positive to the official Johne's disease test to be moved interstate either for slaughter or for the collection of germ plasm. If these proposed changes are finalized, § 80.5 will no longer be

necessary. Therefore, we are proposing to remove 80.5 from the regulations.

Section 80.6 of the regulations requires all records that accompany paratuberculosis reactors interstate to be marked with the words, ''Paratuberculosis Reactors'' and a statement that the vehicles used to transport the animals must be cleaned and disinfected. The applicable records are waybills, conductor's manifests, switch orders, vehicle interchange records, etc. As previously indicated in this document, we are proposing to require an owner-shipper statement with each interstate shipment of positive animals for slaughter purposes and a permit for each interstate shipment of positive animals for the collection of germ plasm and, if applicable, return to the premises of origin. We would require the owner-shipper statement and the permit to indicate that the animals are positive to the official Johne's disease test. The owner-shipper statement would accompany the animals to slaughter, and a permit would accompany animals to the destination for the collection of germ plasm and on return to the premises of origin after the collection of germ plasm. Under these circumstances, we believe that marking other records would be unnecessary. Therefore, we are proposing to remove 80.6 from the regulations.

Section 80.7 of the regulations requires cleaning and disinfecting of all vehicles used to transport paratuberculosis reactors interstate. Section 80.7 requires that cleaning and disinfecting be done in accordance with §§ 71.6, 71.7, 71.10, and 71.11. Section 80.7 also provides for the movement of vehicles if APHIS officials are not present to supervise their cleaning and disinfection. Because these same requirements are clearly spelled out in §§ 71.6 through 71.11, we are proposing to remove § 80.7 from the regulations. We propose to add a provision to § 80.3 that states that means of conveyance used to transport animals positive to the official Johne's disease test must be cleaned and disinfected in accordance with § 71.6, and that facilities in which the animals were maintained must be cleaned and disinfected in accordance with § 71.7.

Section 80.9 of the regulations tells how certificates that accompany animals moved interstate must be handled. In short, § 80.9 contains the provisions for delivery of the certificate to the transportation agency or consignee, as the case may be. Since we are proposing to require the use of an owner-shipper statement and permit, under specified circumstances, with each interstate shipment of animals, rather than a certificate, we are proposing to remove § 80.9 from the regulations.

Based on the proposed removal of current §§ 80.2, 80.5, 80.6, 80.7, and 80.9, we would redesignate remaining sections §§ 80.3, 80.4, and 80.8 as §§ 80.2, 80.3, and 80.4, respectively.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would relieve some restrictions on the interstate movement of domestic animals that are positive to the official Johne's disease test. Currently, animals that are reactors to a test for Johne's disease may be moved interstate for slaughter only. This proposed rule would, among other things, make it easier to move positive animals interstate to slaughter and would allow the interstate movement of sexually intact positive animals for the collection of germ plasm under certain conditions, and where applicable, the return to the premises of origin.

However, we do not anticipate that these changes will have a significant economic impact on small entities. Currently, animals that are moved interstate to slaughter under the regulations must bear an eartag with a serial number and the inscription ''U.S. Reactor'' and be transported with a certificate. In addition, cattle must be branded with the letter ''J'' on their left hip, accompanied directly to slaughter by an APHIS or State representative, or moved in vehicles closed with official seals. We are proposing to remove these requirements and simply require positive animals moving interstate to slaughter to bear an official eartag and be shipped with an owner-shipper statement. There are no direct costs related to these requirements, so herd owners would not experience a savings from the removal of these requirements. However, this proposed rule would expedite the movement of animals by 1 to 5 days because herd owners would not have to wait to obtain the services of an APHIS or State representative prior to the interstate movement of their animals to slaughter. This may result in some small savings to herd owners.

Our proposal to allow herd owners to move positive animals interstate for the collection of germ plasm, prior to slaughter, would provide the herd owners the opportunity to profit from the continued use of their most expensive and productive animals even after they have been slaughtered by using the germ plasm in their breeding program to continue the animals' lineage. In addition, this proposal would allow herd owners to have these animals returned to the premises of origin after the collection of germ plasm, if the owner so chooses.

In a recent study, APHIS examined the cost of Johne's disease on U.S. dairy cattle producers.[2] The study found that infected herds with at least 10 percent of the culled cows showing clinical signs of Johne's disease had an average cost to producers of $227 for each cow in the herd per year. Therefore, the cost for a 100 cow dairy with at least 10 percent of culled cows showing clinical disease signs of Johne's disease would be approximately $22,700 per year. By amending the regulations, we may be able to strengthen detection and control of Johne's disease, which should reduce the producers' Johne's disease-related costs. However, the reduction in disease-related costs is not likely to be significant.

We anticipate that this proposed rule would affect primarily U.S. dairy cattle producers. In 1997, there were 116,680 dairy herds or farms in the United States. We estimate that about 22 percent (25,670 herds) of the U.S. dairy herds are affected with Johne's disease. The Small Business Administration (SBA) considers a dairy farm a small entity if its annual receipts are $0.5 million or less. According to the 1992 Census of Agriculture, 95 percent of dairy producers are considered small entities under SBA guidelines. This proposed rule should have a favorable economic impact on dairy cattle producers. However, for most producers, the impact may be insignificant. This is because on a per head basis, only about 10 percent of the cattle will test positive and not all positive animals are likely to be moved interstate for slaughter or the collection of germ plasm.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and

[2] See *Johne's disease on U.S. Dairy Operations*, National Animal Health Monitoring System, Dairy 1996, October, 1997.

regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–037–1. Please send a copy of your comments to: (1) Docket No. 98–037–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 2073–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the regulations regarding the interstate movement of domestic animals that have reacted to a test for paratuberculosis. This proposed rule would identify an official test for the detection of Johne's disease in domestic animals. In addition, this proposed rule would amend the requirements for moving animals interstate and would allow sexually intact animals that are positive to the official Johne's disease test to be moved interstate for the collection of germ plasm. According to this proposed rule, an owner-shipper statement would be required for the interstate movement of domestic animals for slaughter purposes, and a permit would be required for the interstate movement of domestic animals for the collection of germ plasm and, if applicable, return to the premises of origin.

The owner-shipper statement and permit are considered information collection activities. We are asking OMB to approve these information collection activities in connection with our efforts to ensure that animals affected with Johne's disease are moved interstate with negligible risk of spreading disease to other animals. We are soliciting comments from the public (as well as affected agencies) concerning these proposed information collection activities. We need these comments to help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, (such as 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.)

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.04 hours per response.

Respondents: Herd owners, shippers, State representatives.

Estimated annual number of respondents: 250.

Estimated annual number of responses per respondent: 1.3.

Estimated annual number of responses: 325.

Estimated total annual burden on respondents: 13 hours.

(Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects

9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 80

Animal diseases, Livestock, Transportation.

Accordingly, we propose to amend 9 CFR parts 71 and 80 as follows:

PART 71—GENERAL PROVISIONS

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

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 71.3 would be amended as follows:

a. In paragraph (a), by removing the word ''paratuberculosis'' and replacing it with the words ''Johne's disease''.

b. By revising paragraph (c)(1) to read as set forth below.

c. By redesignating paragraphs (c)(2), (c)(3), and (c)(4) as paragraphs (c)(3), (c)(4), and (c)(5), respectively, and adding new paragraph (c)(2) to read as set forth below.

§ 71.3 Interstate movement of diseased animals and poultry generally prohibited.

* * * * *

(c) * * *

(1) Domestic animals that have reacted to an official test for brucellosis, are not affected with any other disease referred to in this section, and are not tick infested, may be moved interstate in accordance with part 78 of this chapter.

(2) Domestic animals that are positive to the official Johne's disease test, are not affected with any other disease referred to in this section, and are not tick infested, may be moved interstate in accordance with part 80 of this chapter.

* * * * *

3. Part 80, including the title of the part, would be revised to read as follows:

PART 80—JOHNE'S DISEASE IN DOMESTIC ANIMALS

Sec.
80.1 Definitions.
80.2 General restrictions.
80.3 Movement of domestic animals that are positive to the official Johne's disease test.
80.4 Segregation of animals positive to the official Johne's disease test during interstate movement.

Authority: 21 U.S.C. 111–113, 114a–1, 115, 117, 120, 121, and 125; 7 CFR 2.22, 2.80, and 371.2(d).

§ 80.1 Definitions.

Accredited veterinarian.[1] A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this chapter to

[1] The provisions of subchapters B, C, and D of this chapter authorize Federal and State veterinarians and accredited veterinarians to perform specified functions. Full-time Federal (including military) and State employed veterinarians are authorized to perform such functions, pursuant to delegation of authority by the Administrator or cooperative agreements without specific accreditation under the provisions of subchapter J.

perform functions specified in subchapters B, C, and D of this chapter.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

APHIS. The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS representative. An individual employed by APHIS who is authorized to perform the function involved.

Approved livestock facility. A stockyard, livestock market, buying station, concentration point, or any other premises that has been approved under § 71.20 of this chapter.

Area veterinarian in charge. An APHIS veterinarian authorized by the Administrator to supervise and manage the animal health work of APHIS in a specified area of the United States.

Germ plasm. Semen, embryos, or ova.

Interstate. From one State into or through any other State.

Johne's disease. An infectious and communicable disease that primarily affects cattle, sheep, goats, and other domestic, exotic, and wild ruminants, also known as paratuberculosis, caused by *Mycobacterium paratuberculosis.*

Moved. Shipped, transported, delivered, or received for movement, or otherwise aided, induced, or caused to be moved.

Official eartag. An identification eartag approved by APHIS as being tamper-resistant and providing unique identification for each animal. An official eartag may conform to the alpha-numeric National Uniform Eartagging System, or it may bear a valid premises identification number that is used in conjunction with the producer's livestock production numbering system to provide a unique identification number.

Official Johne's disease test. An organism detection test approved by the Administrator and conducted in a laboratory approved by the Administrator.[2]

Owner-shipper statement. A statement signed by the owner or shipper of animals, which states: The number of animals to be moved, the official eartag number of each animal, the species of the animals, points of origin and destination, the consignor and consignee, a statement that the animals are positive to the official Johne's disease test, and any additional information required by this part.

Permit. An official document (VS Form 1–27 or a State form that contains the same information but not a ''permit for entry'') issued by an APHIS representative, State representative, or accredited veterinarian at the point of origin of a shipment to be moved in accordance with this part, which states: The number of animals to be moved, the purpose of the movement, the animals are positive to the official Johne's disease test, the official eartag number of each animal, the animals' breed and sex, the name of the owner of the animals, the points of origin and destination, the consignor and consignee, and the transportation vehicle number or other identification number.

Premises identification number. A unique number assigned by the State animal health official to a livestock production unit that is, in the judgment of the State animal health official or area veterinarian in charge, epidemiologically distinct from other livestock production units. A premises identification number shall consist of the State's two-letter postal abbreviation followed by the premises' assigned number. A premises identification number may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal.

Premises of origin. The farm or other premises where the animals intended for interstate movement are being raised, assembled, or both, immediately before the interstate movement.

Recognized slaughtering establishment. A slaughtering establishment[3] operating under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a State inspected slaughtering establishment.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the District of Columbia, and any territories and possessions of the United States.

State animal health official. The State official responsible for livestock and poultry disease control and eradication programs.

State representative. An individual employed in animal health work by a State or political subdivision of a State, and who is authorized by the State or political subdivision to perform tasks required by this part.

§ 80.2 General restrictions.

Domestic animals that are positive to the official Johne's disease test may not be moved interstate except in compliance with this part.

§ 80.3 Movement of domestic animals that are positive to the official Johne's disease test.

(a) *Movement of domestic animals for slaughter.* Domestic animals that are positive to the official Johnes disease test may be moved interstate for slaughter if:

(1) The animals are moved directly to a recognized slaughtering establishment or to an approved livestock facility for sale to a recognized slaughtering establishment;

(2) An owner-shipper statement that identifies the animals as positive to the official Johne's disease test accompanies the animals during the movement and is delivered to the consignee;

(3) Each animal bears an official eartag; and

(4) The animals are moved to the destination in one continuous movement without unloading.

(b) *Movement of domestic animals for collection of germ plasm.* Sexually intact domestic animals that are positive to the official Johne's disease test may be moved interstate for collection of germ plasm if:

(1) The movement of the animals is agreed upon by the area veterinarian in charge and the State animal health official in both the State of origin and the State of destination;

(2) A permit that identifies the animals as positive to the official Johne's disease test accompanies the animals during movement and is delivered to the consignee;

(3) Each animal bears an official eartag; and

(4) The animals are returned, under permit, to the premises of origin after the collection of germ plasm or the animals are moved directly to a recognized slaughtering establishment or to an approved livestock facility for sale to a recognized slaughter establishment after the collection of germ plasm in accordance with paragraph (a) of this section.

(c) *Cleaning and disinfecting.* Each means of conveyance used to transport the animals must be cleaned and disinfected in accordance with § 71.6 of this chapter. The facilities in which the animals were maintained must be cleaned and disinfected in accordance with § 71.7 of this chapter.

[2] A list of currently approved laboratories and the requirements for obtaining approval are available from the Diagnostic Bacteriology Laboratory, National Veterinary Services Laboratories, P.O. Box 844, Ames, Iowa 50010. The Administrator will approve laboratories to conduct the official Johne's disease test only after determining that the laboratory meets the check test proficiency requirements prescribed by the National Veterinary Services Laboratories. Approval will continue as long as such check test proficiency requirements are met on an annual basis.

[3] A list or recognized slaughtering establishments in any State may be obtained from an APHIS representative, the State animal health official, or a State representative.

§ 80.4 Segregation of animals positive to the official Johne's disease test during interstate movement.

Animals that are positive to the official Johne's disease test may not be moved interstate in a railroad car, boat, truck, or other vehicle containing healthy animals susceptible to Johne's disease unless all of the animals are for immediate slaughter, or unless the positive animals are kept separate from the other animals by a partition that is securely affixed to the sides of the vehicle and prevents the transfer of fecal matter from the animals positive to the official Johne's disease test to the healthy animals in the vehicle.

Done in Washington, DC, this 16th day of March 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–6893 Filed 3–19–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–71–AD]

Airworthiness Directives; Robinson Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) applicable to Robinson Model R44 helicopters. The AD would require installing a shutoff clamp on the auxiliary fuel tank sump drain tube (drain tube) and a placard decal to alert operators as to the proper use of the auxiliary fuel tank drain. This proposal is prompted by a report of fuel leaking from a drain tube opening in the area of the horizontal and vertical firewalls. The actions specified by the proposed AD are intended to prevent fuel leaks from the drain tube that could cause a fire and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 21, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–71–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5265; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications 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 No. 98–SW–71–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, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–71–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

A Malfunction or Defect Report, FAA Form 8010–4, sent to the FAA by an operator, stated that the sump drain tube leaked fuel that accumulated at the junction of the horizontal and vertical firewalls creating a fire hazard. An investigation indicated that a leaky fuel drain valve may allow fuel to accumulate in the engine compartment. This accumulation of fuel creates an unsafe condition. This AD would correct the unsafe condition by requiring installation of a shutoff clamp on the drain tube to prevent fuel leakage and a placard decal to alert operators as to the proper use of the auxiliary fuel tank drain.

The FAA has reviewed Robinson Helicopter Company Service Bulletin SB–30, dated October 28, 1998 (SB). The SB describes procedures for adding a shutoff clamp to the drain tube as a redundant seal when the drain tube is stowed and a placard decal to alert operators as to the proper use of the auxiliary tank drain.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson Helicopter Company Model R44 helicopters of the same type design, the proposed AD would require installing a shutoff clamp to the drain tube to prevent fuel leakage and a placard decal to alert operators as to the proper use of the auxiliary fuel tank drain. These actions are intended to prevent a fire that could cause loss of control of the helicopter.

The FAA estimates that 200 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The manufacturer has indicated that each operator will be provided the part at no cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $12,000.

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 a new airworthiness directive to read as follows:

Robinson Helicopter Company: Docket No. 98–SW–71–AD.

Applicability: Model R44 helicopters, Serial Numbers 0002 through 0529 except 0440, 0485, 0512, 0515, 0519, 0526, 0527, and 0528, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request 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: Within 100 hours time-in-service or 3 calendar months, whichever occurs first.

To prevent fuel leaks from the auxiliary fuel tank sump drain, which could cause a fire and subsequent loss of control of the helicopter, accomplish the following:

(a) Install a shutoff clamp, part number (P/N) D663–1 by sliding it onto the auxiliary fuel tank sump drain tube P/N A729–7 as shown in Figure 1.

(b) Install placard decal P/N A654–93 as shown in Figure 1.

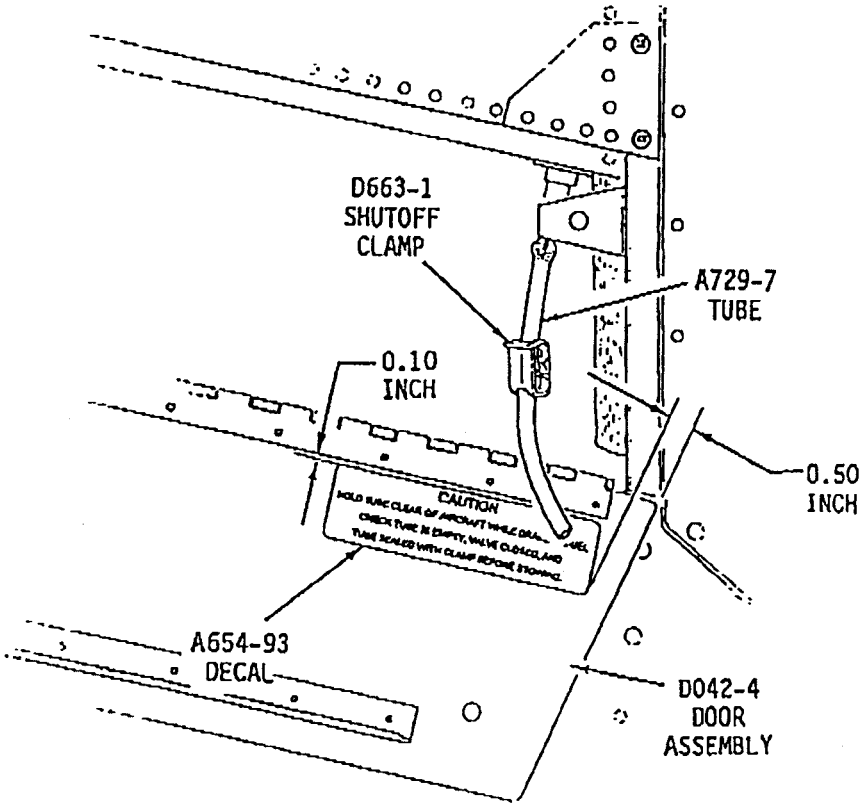

Figure 1

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

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

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

Issued in Fort Worth, Texas, on March 10, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–6557 Filed 3–19–99; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 204

RIN 1010–AC30

Accounting Relief for Marginal Properties

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: The Minerals Management Service hereby gives notice that it is extending the public comment period on a notice of proposed rule, which was published in the **Federal Register** on January 21, 1999, (64 FR 3360). The proposed rule would implement legislation for Federal oil and gas leases. The new regulations would explain to lessees and their designees how to obtain accounting and auditing relief for Federal marginal properties. In response to requests for additional time, MMS will extend the comment period from March 22, 1999, to April 21, 1999.

DATES: Comments must be submitted on or before April 21, 1999.

ADDRESSES: Written comments, suggestions, or objections regarding this proposed amendment should be sent to the following addresses:

E-mail address is: RMP.comments@mms.gov.

For comments sent via the U.S. Postal Service use: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165.

For comments via courier or overnight delivery service use: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, MS 3021, Building 85, Denver Federal Center, Room A–212, Denver, Colorado 80225–0165.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, phone (303) 231–3432, FAX (303) 231–3385, e-Mail David__Guzy@mms.gov.

Dated: March 18, 1999.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 99–7060 Filed 3–19–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[USCG–1998–4354]

RIN 2115–AE88

Tank Vessel Response Plans for Hazardous Substances

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes regulations that would require response plans for certain tank vessels operating on the navigable waters of the United States that could reasonably be expected to cause substantial or significant and substantial harm to the environment by discharging a hazardous substance. These regulations are mandated by the Oil Pollution Act of 1990 (OPA 90), which requires the President to issue regulations requiring the preparation of hazardous substance response plans. The primary purpose of requiring response plans is to minimize the impact of a discharge of hazardous substances into the navigable waters of the United States.

DATES: Comments must reach the Coast Guard on or before June 21, 1999. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before June 21, 1999.

ADDRESSES: You may mail comments to the Docket Management Facility, [USCG–1998–4354], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401 located on the Plaza Level of the Nassif Building at the same address, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble other than material proposed for incorporation by reference, will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

The material proposed for incorporation by reference is available for inspection at room 2100, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 9:00 a.m. and 2:30 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–6716.

FOR FURTHER INFORMATION CONTACT: CDR John Weber, Office of Response (G–MOR), (202) 267–6716; e-mail: Jweber@comdt.uscg.mil or LT Michael Roldan, Office of Standards Evaluation and Development (G-MSR), 202–267–0756; e-mail: mroldan@comdt.uscg.mil. Telephones are equipped to record messages on a 24-hour basis. For questions on viewing, or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages 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 (USCG–1998–4354), and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES.** Persons wanting acknowledgment 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 to hold public meetings regarding this proposed rulemaking. We will announce the dates and times for the meetings in a later notice in the **Federal Register**. You may request a public meeting by submitting a comment requesting one to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial.

Background and Purpose

The Clean Water Act (CWA) [33 U.S.C. 1321(j)(5)], as amended by section 4202(a)(6) of OPA 90, requires owners or operators of tank vessels, offshore facilities, and onshore facilities that could reasonably be expected to cause substantial or significant and substantial harm to the environment to prepare and submit plans for responding to the maximum extent practicable, to a worst case discharge, or a substantial threat of such a discharge, of oil or a hazardous substance into or on navigable waters, adjoining shorelines, or the exclusive economic zone. The Final Rule for oil spill response plans for vessels was published on January 12, 1996 [61 FR 1052]. The Final Rule for oil spill response plans for facilities was published on February 29, 1996 [61 FR 7890]. This proposed rulemaking addresses OPA 90 response planning requirements for tank vessels carrying hazardous substances. A separate rulemaking will propose regulations for facilities.

Regulatory History

Advance Notice of Proposed Rulemaking

The Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) addressing vessel and facility response plans for hazardous substances in the **Federal Register** on May 3, 1996 (61 FR 20084). The ANPRM discussed the background, statutory requirements of section 311(j) of the CWA, and possible regulatory approaches. In addition, the ANPRM raised 96 questions for public comment. The Coast Guard received 42 comment letters replying to the ANPRM. All comment letters were considered in developing this NPRM.

Public Meetings

The Coast Guard conducted public meetings on July 30, 1996, in Washington, DC, and August 5, 1996, in Houston, TX. The Coast Guard considered comments made during these meetings.

Response Plan Workshop

In addition to accepting written comments concerning the development of regulations for vessel response plans for hazardous substances, a workshop and meeting were held in Houston, TX, on February 26 and 27, 1997. The workshop engaged various stakeholders in issues that had been identified as significant in response to the ANPRM. Approximately 120 persons participated in the workshop.

The workshop focused on four specific issues identified in advance by the Coast Guard. These issues were: (1) Role and Contents of First Responders' Guides; (2) Role and Capabilities of Decision Support Systems; (3) Chemical Removal Technology; and (4) Public Responder versus Private Responder Issues. While drafting this NPRM, the Coast Guard considered recommendations from the workshop. A summary of the proceedings of the workshop is available for review and copying in the public docket as described under **ADDRESSES.**

Advisory Committee

The Chemical Transportation Advisory Committee (CTAC) formed the Hazardous Substances Response Plan Subcommittee. This subcommittee developed and recommended hazardous substance response plan criteria for the Coast Guard's consideration in developing requirements for OPA 90-mandated response plans. In addition to the formation of a Steering Committee, the subcommittee established the following working groups to address appropriate aspects of response planning: Fate and Effects, Response Resources and Methodology, and Planning Process. Based on work done by the groups, the CTAC subcommittee delivered a report containing findings and recommendations. Input from the committee was used in the development of this NPRM.

Discussion of Proposed Rule

1. General

In response to public comment and recommendations from the Chemical Transportation Advisory Committee, the Coast Guard established several principles to guide the development of this proposed rule. These principles specify that—

a. The response plans should address human health which, as the primary concern, includes the general public, vessel crew, and responders;

b. The regulations should recognize and promote existing industry best practices;

c. The regulations should allow for flexibility in plan development to accommodate other existing practices that are effective;

d. The Coast Guard should avoid developing prescriptive ''one size fits all'' regulations;

e. The Coast Guard should avoid duplicating existing federal regulations;

f. The Coast Guard should maximize consistency with international standards;

g. The regulations should reflect the differences in planning requirements between oil and hazardous substances, specifically as they relate to recoverability and risk of exposure; and

h. The regulations should facilitate amending existing oil response plans to meet requirements for hazardous substances under OPA.

A fundamental underpinning of these proposed regulations is that, for hazardous substance discharges, the availability of information and expertise is essential to support response decision-making, while the mobilization of containment and collection equipment will be feasible only as conditions allow. For oil response planning, some portion of the spilled product may be recoverable through containment and collection. The amount recovered is largely a function of how rapidly response equipment can be deployed. For hazardous substances, containment and collection may be viable for certain chemicals, depending on environmental conditions and safety considerations. Limitations on containment and collection are also imposed by the compatibility of equipment with the hazardous substance in question. The most effective mitigation strategy may be to control the source of the discharge, not contain and collect the hazardous substance. The Coast Guard prefers to foster a ''quickly assess the risk and respond accordingly'', instead of a ''rush in to contain and collect the product'' philosophy.

For the reasons previously described, these proposed regulations contain requirements that ensure access to certain information and equipment during a response, and the availability of appropriate technical expertise as necessary. The Coast Guard intends that owners/operators will, through good business practice, identify and perform the most appropriate response strategies.

2. Consistency With International Standards

The International Maritime Organization (IMO) is developing chemical response planning requirements to augment existing oil response planning requirements. Current international standards encompass several hundred chemicals, many of which are outside the Coast Guard's statutory authority in developing hazardous substance response planning regulations. The IMO has a subcommittee on international standards for hazardous material response. The Coast Guard has worked with this subcommittee to ensure our regulations are consistent with international standards.

3. Summary of Proposed Requirements

Following is a discussion of sections contained in the proposed rule.

Section 155.3015 indicates who must comply with these regulations. It applies to owners and operators of tank vessels that carry hazardous substances in bulk as cargo or cargo residue. Tank vessels include both tankers and tank barges that carry any hazardous substance. The term ''bulk'' means that a hazardous substance is carried in an integral tank, or is transferred into a marine portable tank while on the vessel. These regulations would not apply to packaged or containerized hazardous substances.

The Oil Pollution Act of 1990 amended the Clean Water Act (CWA) with respect to oil and hazardous substances. Accordingly, the determination of what substances are hazardous substances is made under the CWA. The complete list of CWA hazardous substances can be found in 40 CFR 116.4. These regulations would also apply to isomers and hydrates, as well as any solutions and mixtures of 10% or more, by weight.

Some comments made during public meetings and in response to the Advance Notice of Proposed Rulemaking (ANPRM) (61 FR 20084; May 3, 1996) encouraged the Coast Guard to expand the applicability of these regulations beyond the CWA hazardous substances carried in bulk. For the reasons described previously, OPA 90 and the CWA, as amended, prevent the Coast Guard from doing this. However, we ensured response plans contained tools to mitigate incidents involving hazardous substances, including those substances not covered under these regulations.

Section 155.3020 includes definitions that apply to the subpart. Many of the definitions listed mirror those used in oil spill response planning regulations contained in 33 CFR 155. We added or modified some definitions to make them applicable to hazardous substance response activities or to improve their clarity.

Section 155.3021 discusses how a plan-holder can ''ensure the availability of response resources by contract or other approved means.'' These provisions are essentially unchanged from oil response plan regulations, although the plan-holder must ensure appropriate resources are available.

Section 155.3022 contains the requirement to designate a Qualified Individual (QI) and alternate QI in the plan. As prescribed by OPA 90, a QI must have full authority to implement all response actions necessary to minimize or mitigate damage to public health, the environment, and public and private property. A QI must be able to immediately and continuously communicate with the appropriate federal official and response resource providers, as needed. It is not assumed that a QI for oil spill response will necessarily be an appropriate QI for hazardous substance discharges.

Several comments to the ANPRM and public meetings have indicated that under the oil response planning regulations, some QI's do nothing more than obligate funds. These comments suggest that the role of the QI does not include involvement in decisions relating to a response and therefore, the QI does not need to have any understanding of incident response. This is not the Coast Guard's expectation of a QI.

The Coast Guard understands that Congress intended for a ''qualified individual'' to have basic qualifications that demonstrate an ability to coordinate, with full authority from the plan-holder, a response to an incident. Early in a response, when the risks are often greatest, the QI may independently make decisions that could impact the overall response. For example, a plan may identify a list of contractors that provide particular response services. Without a basic knowledge of chemical response, a QI may not know which resource provider to contact or be able to characterize the nature of the incident to responders. This knowledge may not be as critical for oil spills, where response options are more standardized, and the immediate threat to human health is not as prevalent. It is critical that QI's are properly trained by establishing a minimum standard training requirement.

To build on an existing standard that is widely accepted and demonstrates the appropriate skill set, the proposed regulations require QI's to meet the requirements of an incident commander under the OSHA hazardous waste operations and emergency response provisions in 29 CFR 1910.120(q)(6)(v). Qualifications are further described in emergency response training guidance for incident commanders contained in Appendix E to § 1910.120. Furthermore, this standard is consistent with the Environmental Protection Agency's expectation of a QI under its facility response plans for oil.

The OSHA training requirement for incident commanders is a minimum qualification, not an absolute measure of expertise in and of itself. Plans require designating each QI in writing, and indicate that the QI is familiar with the response plan and has full authority to implement actions to contain, remove, or otherwise minimize or mitigate damage to the public health, the environment, and public property. Owners or operators should ensure that their QI's training and experience are adequate to carry out designated responsibilities.

The Coast Guard welcomes comments regarding the recognition of other standards or certifications that demonstrate a working knowledge of hazardous substance response that is adequate for the responsibilities contained in these regulations.

At the time of the discharge, a responsible member of the vessel's crew becomes the incident commander and initiates notification and shipboard mitigation procedures, if appropriate. When that vessel crew member notifies the QI of the hazardous substance discharge, the QI may assume the role of incident commander. The individuals acting as incident commander may change as an incident progresses, particularly if the duration of the event is prolonged.

Section 155.3026 describes the actions that could be taken to receive authorization to carry hazardous substances after submitting a plan to the Coast Guard, but before it has been approved. These proposed requirements mirror those currently required for oil spill response plans.

Section 155.3030 contains requirements that pertain to the format and contents of response plans. These requirements are very similar to those contained in vessel oil spill response plans regulations.

Because response plans must be consistent with the National Contingency Plan and appropriate Area Contingency Plans (ACPs), some members of the public suggested that the Coast Guard refrain from developing these regulations prior to November 1998, when ACPs must be updated to include hazardous materials response planning. In consideration of this request, the Coast Guard has concluded that the development of regulatory requirements prior to the final ACP updates would be acceptable, but plans approved prior to the issuance of an updated ACP would be grandfathered until the next required review. The Coast Guard will accept plans written using the Integrated Contingency Plan (ICP) Guidance provided the plan meets all of our proposed requirements. The ICP was published in the **Federal Register** on June 5, 1996 (61 FR 28642).

Section 155.3031 provides plan-holders with the flexibility of modifying existing oil spill response plans with

additional information that meets hazardous substance response-specific requirements.

Section 155.3035 describes the required contents of a response plan. Some of the requirements mirror those found in the oil spill response planning regulations; some do not. The following is a discussion of some of the proposed requirements that would deviate substantially from existing oil spill response plan provisions.

Paragraph (b) requires a description of the methods used to make notifications, as well as a list of those individuals and organizations required to be notified. Due to the nature of tank vessel operations, the proximity to human populations, and the potential for exposure following a discharge, plans must include notifications to local public response organizations so they may initiate established response procedures and discharge notifications.

Paragraph (b)(4) requires that the incident commander, notified in accordance with paragraph (b)(3)(ii), must have the capability of arriving at the incident command post, if established, or at the immediate vicinity of the incident, within a reasonable time-frame. The Coast Guard intends that a ''reasonable time-frame'' should reflect the critical factors relevant to the incident and typically may be no more than 2 hours from notification. Current industry practices indicate that private response organizations have established networks of personnel that fulfill the roles of the qualified individual and incident commander. The specific time frame may be influenced by the nature of the discharge, proximity to population centers, weather conditions or other factors.

Provisions contained in paragraph (c) of this section would call for plan-holders to develop a risk-based decision support process. Public commenters suggested that the use of automated ''decision support systems'' or ''expert systems'' may be an effective tool for use in determining response strategies. The proposed requirement is intended to provide a tool to be used by responders to ensure thorough consideration of risk factors that may influence response activities. This includes a description of processes which will be used to identify, evaluate, control, and communicate risk presented by the hazardous substance discharge. This requirement could be met through a decision tree, flow diagram, automated system, or any other method that contains the required components.

The provisions in paragraph (e)(4) require that plans describe the organizational structure that will be used to manage response operations. This structure must outline the roles and responsibilities of the specific functional areas contained in the National Interagency Incident Management System (NIIMS) Incident Command System (ICS). This organizational structure, to include functional area roles and responsibilities, is described in the U.S. Coast Guard Field Operations Guide (ICS–OS–420–1). This document can be requested by contacting the U.S. Coast Guard Headquarters (G–MOR–3), 2100 Second Street SW., Washington, DC 20593–0001, or obtained electronically via Internet URL http://www.uscg.mil/hq/g-m/nmc/response/fog/fog.htm.

Paragraph (e)(4)(i) contains a provision that requires an understanding of the unified command. Briefly summarized, the unified command consists of a Federal On Scene Coordinator (Federal OSC), State On Scene Coordinator (SOSC), local emergency coordinator, and responsible party's incident commander, who direct and oversee all public and private resources dedicated to the response. Unified command members are expected to establish joint control over an incident, and develop mutually-agreeable response strategies. If the unified command cannot develop mutually agreeable response strategies, or if the Federal OSC believes that the responsible party's actions are unsatisfactory, the Federal OSC may assume overall control of the response. This action is normally used as a last resort when the responsible party is uncooperative with federal and state representatives.

Paragraph (e)(4)(i) requires that each plan describe the key roles and responsibilities of the incident commander, defined in the proposed regulations as the designated representative of the responsible party in the unified command. This individual may be the QI.

Paragraph (e)(4)(iv) requires that each plan describe how the responsible party will liaison with local public response organizations following a hazardous substance discharge. Although OPA 90 explicitly requires the availability of private resources to respond to these discharges, local responders, such as firefighters and hazardous materials response teams, will probably respond as well. This requirement recognizes the benefits gained by ensuring an effective liaison between the responsible party and these response organizations.

Paragraph (e)(6) contains requirements to have the capability to rapidly integrate the following types of expertise into the spill management team: product specialist, toxicologist, certified marine chemist, chemist or chemical engineer, and certified industrial hygienist (CIH). The need for these areas of specialty will be dictated by each discharge scenario; however, the response to such a discharge will be more effectively executed if this expertise is available to advise the unified command. Therefore, these specialties must be accessible.

Paragraph (g) describes exercise procedures for hazardous substance response. The proposed requirements are identical to those requirements contained in oil spill response plan regulations, except that plan-holders now conducting oil spill exercises would be allowed to replace between 25 and 75 percent of oil spill exercises with hazardous substance exercises. The percentage would be determined by the plan-holder, and should reflect the relative quantities of oil and hazardous substance cargo carried by the company.

Paragraph (h) ''Geographic specific appendix for each COTP zone in which your vessel operates'', identifies the operating area(s) within a particular COTP zone in which the vessel will operate. This would not restrict the vessel from operating in the entire zone, however. Additional information found in this appendix would identify response resources that are either listed or ensured by ''contract or other approved means'' that would respond to a hazardous discharge in the identified operating area.

The determining factors as to whether equipment must be contracted or not relates to the probability of its use following a worst case discharge. It is likely that personal protective equipment, monitoring equipment, and dispersion modeling would be necessary to assess the potential risks and develop response strategies. Unlike oil spills, where containment and collection strategies are standard, many hazardous substances, once discharged, cannot be contained or collected. The first priority for these discharges would be to ensure that peoples' exposure to the hazardous substances is minimized. The proposed equipment requirements are designed to do this.

For hazardous substances that can be contained and collected (e.g., those that are not highly soluble or reactive in water), paragraph (h) proposes that containment and collection equipment be listed in the plan so it could be quickly mobilized when needed. The equipment is not required to be ensured available by contract or other approved means because the probability of its use is limited, and factors influencing a

potential discharge create an almost limitless number of response scenarios. Therefore, the Coast Guard could not assume that the equipment will be needed.

Equipment that must be identified in the plan would correspond to two hazardous substance categories describing behavior following a discharge: ''sinkers'' and ''floaters.''

''Sinkers'' are those hazardous substances whose physical and chemical properties, following a discharge into water, result in a substance in the water that does not float, react chemically with water, rapidly vaporize, or rapidly dissolve. Under ambient conditions, these chemicals have a solubility of less than .01 percent, specific gravity greater than 1.0, and a vapor pressure less than 1 psig.

''Floaters'' are those hazardous substances whose physical and chemical properties, following a discharge into water, result in a substance on the water surface that does not rapidly sink, react chemically with water, vaporize, or dissolve. Under ambient conditions, these hazardous substances have a solubility of less than .01 percent, a specific gravity less than 1.0, and a vapor pressure less than 1 psig.

Neither a ''sinker'' or ''floater'' designation is intended to include hazardous substances that are highly reactive in water, and therefore could not be reasonably contained or collected under any conditions. Hazardous substances that do not fall into either of these categories would not be covered by the requirements of §§ 155.3035(h)(3) and (4).

Requirements that pertain to lightering, marine salvage, and firefighting would also be contained in paragraph (h). Lightering requirements would be consistent with the existing requirements for oil spill response plans. Based on comments made during the August 5, 1997 Marine Salvage and Firefighting Workshop, salvage and firefighting requirements are different from those contained in oil spill response planning regulations. The requirement to have the capability of bringing salvage and firefighting resources on-scene within 24 hours would not imply that all equipment must be on-scene within 24 hours. ''Salvage resources'' and ''firefighting resources'' include the necessary people and equipment that could evaluate and recommend appropriate salvage or firefighting strategies.

On February 12, 1998, the Coast Guard published a final rule (63 FR 7069) suspending, until February 12, 2001, deployment of salvage and firefighting equipment requirements in oil spill response plans. This suspension addressed public confusion regarding the correct interpretation of the phrase ''equipment and expertise'' and debate over the 24-hour-response time requirement. The Coast Guard is currently reviewing the salvage and marine firefighting capabilities within the United States and its territories. Results from this analysis may change our proposed salvage and firefighting requirements for vessels carrying hazardous substances. Any changes to our proposed salvage and firefighting requirements would be issued in either a Supplemental Notice of Proposed Rulemaking to this proposal or a separate Notice of Proposed Rulemaking addressing salvage and firefighting requirements for both oil and hazardous substance response plans.

Paragraph (j) would require the inclusion of hazardous-substance-specific information in each plan. The types of information would include cautionary response considerations, health hazards, fire hazards, chemical reactivity, water pollution, shipping information, hazard classifications, and physical and chemical properties.

Hazardous-substance-specific information required in the proposed rule is essentially the same information that is contained in the Chemical Hazards Response Information System (CHRIS). CHRIS is being expanded to include more chemicals, as well as improvements in format, content, and capabilities. It has historically functioned as a widely-accepted source of chemical-specific information for use by responders and response plan developers.

Because CHRIS is one of many tools that responders could use in planning for and during an actual response, and because responders and response planners need the flexibility to choose their own response tools, the Coast Guard does not propose to codify the use of the CHRIS manual.

Unlike previous versions of CHRIS, which were available only as hard-copy manuals, the new version will be available in hard-copy, electronic, and Internet formats. The revised CHRIS will afford users flexibility to tailor the system to meet specific needs. The electronic version will reside in a searchable database that allows for customized queries. Comments on how to further improve CHRIS are welcome and may be forwarded to the location listed under **ADDRESSES.** The Coast Guard intends that CHRIS will be available prior to the publication of a final rule on hazardous substance response plans.

Section 155.3055 calls for plan-holders to conduct their own evaluations of response resource providers named in response plans. These evaluations would cover both equipment adequacy and competency of personnel resources. The plan-holder must provide written certification of this evaluation, signed by the owner or operator.

The Coast Guard will consider adopting privately-sponsored programs that establish a standard that assures adequate capabilities of resource providers exist in order to meet plan requirements. The development of such a program will reduce the burden on owners or operators of conducting individual provider evaluations and is encouraged.

Vessel response plans are ''self-certifying'' in nature, as provided for by 33 CFR 155.3055 and 3065(a)(3). The scope of these certification statements includes the assurance that the response resources required by the applicable subparts have been ensured available through contract or other approved means. As such, it should be noted that any knowingly fraudulent statements or misrepresentations regarding contracted resources within the plan can result in an owner or operator being criminally prosecuted under 18 USC 1001, which, upon conviction, carries criminal penalties of a fine, up to five years of imprisonment, or both.

Incorporation by Reference

Material that would be incorporated by reference is listed in § 155.140. The material is available for inspection where indicated under **ADDRESSES.** Copies of the material are available from the sources listed in § 155.140.

Before publishing a final rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Assessment

Due to substantial public interest, this proposal is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget. Although the proposed rule is not economically significant, section 6(a)(3) of that order requires an assessment of potential costs and benefits. The proposed rule is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). A draft Assessment has been prepared and is available in the docket for inspection or

copying where indicated under **ADDRESSES.**

The Coast Guard does not anticipate that the proposed rule will result in a significant economic burden on regulated entities. These proposed regulations are expected to impact only those vessel owner/operators that must comply with any new requirements. The Coast Guard will also incur costs related to plan review and approval.

Benefits are anticipated to result from an increased level of preparedness and efficiency in conducting response operations. Anticipated benefits from these regulations include averted pollution, a reduction in injuries and property damage associated with hazardous substance discharges, the avoidance of costs incurred by both public and private entities directly involved in response operations, and reduction of impacts on populations located in the vicinity of such discharges.

As many as 560 U.S. and foreign flag tankers and 1907 tank barges carry bulk chemicals in U.S. waters. These figures represent vessel ownership by an estimated 367 tanker and 182 barge companies. While all of these vessels do not carry the specific hazardous substances covered under these regulations, the analysis uses the conservative assumption that all of these vessels will be impacted by the regulations.

In determining the costs and benefits of the proposed regulations, the draft regulatory assessment for this proposed rule considered the following potential regulatory components:

1. The Coast Guard will take no action beyond existing regulations.

2. Regulations will require the submission of response plans containing information regarding qualified individuals, training, exercises, hazardous substance characteristics, notification procedures, and other crew procedures. This is identified as component A in the Regulatory Assessment.

3. The availability of a ''first responders guide'' and the development of a ''decision support system'' will be a voluntary measure not mandated by the regulations. Based on industry feedback, we expect compliance with these voluntary measures to be at or near 100 percent. This is identified as component B in the Regulatory Assessment.

First responders guides are concise instructions or handbooks that would be immediately available to personnel most likely to be at risk in the event of a hazardous substance discharge, and therefore most likely to take immediate actions. The level of detail in these guides would be determined by each vessel owner or operator, and each company's expectation of the crew members in the event of a discharge. It is intended that the guides would be as specific as possible, and not include generic guidelines that allow for broad interpretation by those expected to use them.

Decision support systems are tools that responders can use to analyze risks associated with a hazardous substance discharge, and that assist in making decisions related to identifying and evaluating response strategies. Such systems could be automated, manual or human-based.

4. The preferred regulatory approach includes components A and B, plus requiring companies to contract for spill response equipment and having deployment drills. Regulations will essentially mirror requirements for vessel response plans for oil now found in 33 CFR 155 by requiring contracted containment and removal equipment to respond to hazardous substance discharges. This approach, designated as Alternative 1 in the Regulatory Assessment, is reflected in this proposed rule.

Cost-Effectiveness Summary

The measures included in the selected regulatory alternative are expected to yield a net cost-effectiveness of about $13,254 per barrel of hazardous substance spillage averted. This cost-effectiveness value is expressed in 1997 dollars and is a ten-year quantifiable present value (PV). The cost of the proposed rule is approximately $58.6 million, while its benefits are approximately 4000 barrels of pollution averted, and approximately $5.3 million in avoided costs. Subtracting the avoided costs of the proposed rule from its total cost yields a net rule cost of about $53.3 million. Dividing this net cost by about 4,000 barrels yields the net cost-effectiveness ratio of $13,254. This procedure allows us to compare pollution and property damage benefits together.

The total first-year cost of these new requirements to industry is estimated to be a maximum of $12.9 million. The recurring costs are estimated to be a maximum $8.3 million per year.

The estimated cost for component A only is $32.5 million. Its benefits include 2,432 barrels of avoided pollution and $3.2 million of damages averted. Its net cost-effectiveness is $12,037 per barrel unspilled.

The marginal cost for the additional measures contained in component B not included in component A is $3.8 million. Marginal benefits include 651 barrels of avoided pollution and $0.9 million of damages averted. The marginal net cost effectiveness of these additional measures is $4,506 per barrel unspilled.

The marginal cost for the additional measures contained in Alternative 1 not included in component B is $22.3 million. Marginal benefits include 935 barrels of avoided pollution and $1.2 million of damages averted. The marginal net cost effectiveness of these additional measures is $22,520 per barrel unspilled.

Non-quantified benefits could further decrease the cost per barrel of pollution averted. The most significant non-quantifiable benefit is the usefulness of response plans in many chemical discharge scenarios, not just those involving a worst case discharge of bulk Clean Water Act hazardous substances. History shows that, while only a limited number of ''worst case discharges'' of Clean Water Act hazardous substances have occurred in recent years, hundreds of discharges involving other chemicals, and in smaller quantities, have occurred. Response to these discharges would also have been enhanced if response plans had been developed.

A. Costs

The 10-year PV cost of the proposed rule is approximately $58.6 million. Costs associated with these proposed regulations are the development of the actual hazardous substance response plans, as well as the costs of operating in compliance with the plan. In calculating costs, the Coast Guard used the estimate that 80% of companies owning/operating tank vessels covered by these regulations are currently holding oil response plans required by 33 CFR 155 Subpart D, and will modify or add to these existing plans rather than develop entirely new plans. Consequently, these companies have been credited with partial compliance with these proposed regulations. To the extent possible, costs reflect input from a range of industry sectors that will be directly or indirectly impacted by these regulations. Unless otherwise specified, ''total cost'' reflects the aggregate cost to the entire industry impacted by these proposed regulations. The Regulatory Assessment, prepared for this regulatory project, has broken down costs by components. The components and their costs are:

Baseline. The Coast Guard will take no action beyond existing regulations. By passing OPA 90, Congress indicated a preference for a statutory solution to oil and hazardous substance response planning rather than a ''free market''

solution. Given that OPA 90 has been enacted, ''no action'' is essentially not a feasible alternative.

Component A. The Coast Guard will require that response plans be developed for all vessels and facilities engaged in the handling, transfer, or storage of any of the regulated hazardous substances covered by the regulations. The plans will include—

- General site information;
- Consistency with associated national and area planning requirements;
- Designation of a qualified individual with the authority to activate spill response resources;
- Contact lists;
- Training and drills;
- Submission of plans; and
- Periodic updates as associated changes may occur.

Component B. Component B includes cost from the measures in component A, plus the costs from the following two measures—

- First Responders Guides, or handbooks that provide instructions for initial response; and

Subject matter experts and a Decision Support System incorporating expert knowledge to assist in responding to a spill and assessing the risk to the surrounding areas.

Alternative 1. Alternative 1 captures what is mandated by statute. In addition to components A and B, companies will be required to contract for spill response capabilities and have equipment deployment drills. This requirement will mirror that required in the oil response plan regulations but will be applied only to those substances that display oil-like characteristics (i.e., those that float on water).

B. Benefits

Based on the preferred alternative and assuming a 10-year PV, the amount of pollution averted is estimated at 4,000 barrels, while the avoided costs are estimated to be about $5.3 million. Anticipated benefits from these regulations include averted pollution, a reduction in injuries and property damage associated with hazardous substance discharges, the avoidance of costs incurred by both public and private entities directly involved in response operations, and reduction of impacts on populations located in the vicinity of such discharges.

The degree to which response operations would be improved was estimated by interviewing 11 subject matter experts that have been directly involved with responding to hazardous substance discharges. These individuals represent vessel owners or operators, local hazardous material response teams, U.S. Coast Guard Federal On-Scene Coordinators and Marine Safety Offices, and the U.S. Environmental Protection Agency.

Each interviewee was asked to estimate the level of effectiveness for each regulatory component. These estimates, ranging from minimal to significant impact on the efficiency of response operations, were averaged to develop an overall ''percent efficiency''. This in turn reflects the percent to which costs of a response would be reduced and the amount of pollution that could be averted.

An indirect benefit applies to chemical release incidents not covered under these regulations. These regulations apply to worst case discharges and the threat of such discharges. In reality, the vast majority of these incidents occur during transfer operations and are not worst case discharges, and frequently involve chemicals not carried in bulk or not covered by these regulations. Realizing that the benefit of the plans would be limited if they could be applied only to worst case discharges involving specific bulk hazardous substance cargoes, the Coast Guard designed these regulations with enough flexibility to be useful in guiding a wider range of chemical responses.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small business and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

These regulations are not expected to significantly impact small businesses. No comments were made during two public meetings, one workshop, and in response to an ANPRM, that expressed concerns about impacts on small entities. The Coast Guard further contacted trade associations representing small businesses in the chemical transportation industry and received no indications that these regulations would adversely impact small entities. In total the draft Small Entity Assessment estimates that a maximum of 11 tank barge owners and no tank ship owners are small entities and could be affected by these regulations.

Excluded from these proposed regulations are public vessels, vessels of opportunity, and fishing or fishing tender vessels of not more than 750 gross tons. The regulations also contain several provisions giving affected small businesses flexibility in complying with the requirements. The proposed regulations provide allowances to modify existing response plans and to take advantage of participation in industry cooperatives. Additionally, the Coast Guard is updating and making CHRIS available, which would essentially provide impacted parties with the hazardous-substance-specific information required in the regulations. For any company that believes it will be significantly impacted, the regulations allow the company to request further flexibility in complying with the requirements.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see ADDRESSES) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the Project Development Division (G–MSR–2) at 202–267–0756.

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

Collection of Information

This proposed rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As defined in 5

CFR 1320.3(c), ''collection of information'' includes reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of the respondents, and an estimate of the total annual burden follow. Included in the estimate is the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Tank Vessel Response Plans and Response Equipment for Hazardous Substances.

Summary of the Collection of Information: The Coast Guard has prepared and will seek approval for this collection of information under a consolidated collection which applies to these proposed regulations, proposed regulations for Facility Hazardous Substance Response Plans as well as existing regulations for Vessel and Facility Oil Response Plans. This proposal contains collection of information requirements in §§ 155.3022 (What are the requirements for qualified individuals and alternate qualified individuals and what authority do they have?); 155.3025 (When may I engage in hazardous substance operations?); 155.3026 (How do I obtain an interim operating authorization or a one-time authorization?); 155.3030 (What is the general format of a response plan?); 155.3031 (May I augment my vessel response plan for oil with hazardous substance response information?); 155.3032 (How many copies of the plan must I have, and where must they be maintained?); 155.3035 (What are the required contents of each section of the plan?); 155.3055 (How must I certify that my response resource providers are capable of meeting plan requirements?); 155.3065 (What are the procedures for plan submission and receiving approval?); 155.3066 (What are the procedures for submitting a request for acceptance of alternative planning criteria?); and 155.3070 (What are the procedures for plan review, revision, resubmission, and appeal?).

Need for Information: This information is necessary to ensure that vessels carrying hazardous substances in bulk as cargo or cargo residue entering and operating in U.S. waters are adequately prepared to respond to a hazardous substance discharge.

Proposed Use of Information: In part, the purpose of the OPA 90 amendments to section 311 of the FWPCA is to reduce the number of hazardous substance spills and to minimize the impact of the hazardous substance spills when they occur in U.S. waters. Without the proposed requirements for vessel response plans, it is possible that some operators will not maintain the necessary internal resources (effective planning, training, drilling, etc.) or external resources (adequate shore-based response capability) to meet the requirements of these proposed regulations. The proposed collection of information requirements help ensure and monitor, through the submission and recurring update of response plans, that vessels entering and operating in U.S. waters have appropriate response plans and shore-based response resources.

Submission of vessel response plans to the U. S. Coast Guard for approval, the onboard verification of an approved plan during routine boarding procedures, and the maintenance of training and drill records is believed to be the best way to ensure compliance.

Description of the Respondents: Owners and operators of tank vessels carrying hazardous substances in bulk as cargo or cargo residue while entering or operating in U.S. waters.

Number of Respondents: 659.

Frequency of Response: Response plan submitted every 5 years; notice of reviews completed annually; updates as necessary.

Burden of Response: A one-time burden of 45,960 hours for reporting and an annual recordkeeping burden of 4,600 hours.

Estimated Total Annual Burden: One-time reporting burden of 69.7 hours and an annual recordkeeping burden of 6.9 hours.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Coast Guard has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information. The Coast Guard solicits public comment on the proposed collection of information to (1) evaluate whether the information is necessary for the proper performance of the functions of the Coast Guard, including whether the information would have practical utility; (2) evaluate the accuracy of the Coast Guard's estimate of the burden of the collection, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection on those who are to respond, as by allowing the submittal of responses by electronic means or the use of other forms of information technology.

Persons submitting comments on the collection of information should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES** by the date under **DATES**.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. Before the requirements for this collection of information become effective, the Coast Guard will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that preparation of an Environmental Impact Statement is not necessary. A draft Environmental Assessment and a draft Finding of No Significant Impact are available in the docket for inspection or copying where indicated under **ADDRESSES.**

The draft Environmental Assessment indicates that these regulations could be expected to result in a positive impact on the environment through the avoidance of adverse impacts following a hazardous substance discharge. The assessment analyzed the range of environmental impacts associated with several potential regulatory strategies considered by the Coast Guard, with a ''no action'' option as a baseline. A ''no action'' regulatory action would essentially result in no impact on the environment. Other regulatory options considered would result in positive impacts by averting pollution.

Estimates of pollution averted were established through interviews with individuals having substantial experience in the area of chemical response. No aspects of these regulations would be expected to result in adverse impacts on the environment.

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 approaches for proposed and final 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 rule does not impose Federal mandates on any State, local or tribal governments or the private sector.

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 notice of proposed rulemaking (NPRM) and reached the following conclusions:

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

E.O. 12875, Enhancing the Intergovernmental Partnership. This NPRM 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 NPRM 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 NPRM is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects 33 CFR Part 155

Hazardous substances, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 155 as follows:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§§ 155.100–155.130, 155.350–155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110–155.1150 also issued 33 U.S.C. 2735.

2. In § 155.140(b), add, in alphabetical order to the organization referenced, the following standard:

§ 155.140 Incorporation by reference.

* * * * *

(b) * * *

International Maritime Organization (IMO)

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Resolution A.648(16), General Principles for Ship Reporting System and Ship Reporting Requirements October 19, 1989 .....155.3035

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3. Revise the heading to subpart D to read as follows:

Subpart D—Response Plans for Oil

4. Add subpart H, consisting of §§ 155.3010 through 155.3070, to read as follows:

Subpart H—Response Plans for Hazardous Substances

Sec.

155.3010 What is the purpose of this subpart?
155.3015 Who must follow this subpart?
155.3020 What definitions apply to this subpart?
155.3021 What is a ''contract or other approved means''?
155.3022 What are the requirements for qualified individuals and alternate qualified individuals and what authority do they have?
155.3025 When may I engage in hazardous substance operations?
155.3026 How do I obtain an interim operating authorization or a one-time authorization?
155.3030 What is the general format of a response plan?
155.3031 May I augment my vessel response plan for oil with hazardous substance response information?
155.3032 How many copies of the plan must I have, and where must they be maintained?
155.3035 What are the required contents of each section of the plan?
155.3050 What are the operating criteria that apply to response resource equipment?
155.3055 How must I certify that my response resource providers are capable of meeting plan requirements?
155.3065 What are the procedures for plan submission and receiving approval?
155.3066 What are the procedures for submitting a request for acceptance of alternative planning criteria?
155.3067 How do I submit an appeal if my response plan is not approved?
155.3070 What are the procedures for plan review, revision, resubmission, and appeal?

Subpart H—Response Plans for Hazardous Substances

§ 155.3010 What is the purpose of this subpart?

The purpose of this subpart is to establish requirements for hazardous substance response plans for certain vessels. The planning criteria in this subpart are intended for use in response plan development and the identification of necessary resources. The development of a response plan prepares the vessel owner or operator and the vessel's crew to respond to a hazardous substance discharge. The specific criteria for response resources and their arrival times are not performance standards. They are planning criteria based on a set of assumptions that may not exist during an actual hazardous substance discharge incident.(3)

§ 155.3015 Who must follow this subpart?

(a) You must follow this subpart if you are an owner or operator of a tank vessel that carries any bulk hazardous substance as cargo or cargo residue. This includes any hazardous substance, its isomers and hydrates, as well as any mixtures and solutions that contain 10% or more hazardous substance, by weight.

(b) You are not required to follow this subpart if you own or operate any of the following:

(1) Public vessels and vessels deemed public vessels;

(2) A vessel that, although constructed or adapted to carry hazardous substances in bulk as cargo or cargo residue, is not storing or carrying hazardous substances in bulk as cargo or cargo residue;

(3) A dedicated response vessel that is designated in its certificate of inspection as such a vessel, or that is adapted to respond to a discharge of oil or a hazardous material, when conducting hazardous substance response operations;

(4) A vessel of opportunity that—

(i) Conducts response activities in a response area; and (ii) Does not conduct hazardous substance operations except when involved in response activities;

(5) An offshore supply vessel as defined in 46 U.S.C. 2101;

(6) A fishing or fishing tender vessel as defined in 46 U.S.C. 2101 up to 750 gross tons when operating as such;

(7) A foreign flag vessel engaged in innocent passage.

(c) If you own or operate a vessel that must follow this subpart, but are not operating within the navigable waters or the exclusive economic zone (EEZ) of the United States, then you must meet all requirements of this subpart except:

(1) You do not have to identify and ensure the availability of response resources, including the spill management team;

(2) You do not have to provide the geographic-specific appendices required in § 155.3035(j);

(3) You do not have to designate a qualified individual and alternate qualified individual as required in § 155.3022.

§ 155.3020 What definitions apply to this subpart?

As used in this subpart:

Adverse weather means the hydrographic, meteorological, and other environmental conditions that magnify the risk of adverse impact to human health and the environment when a hazardous substance is discharged, and must be considered when identifying response resources in a response plan.

Bulk means any volume of a hazardous substance carried in an integral cargo tank of a vessel, and any volume of a hazardous substance transferred to or from a marine portable tank or independent tank while on board a vessel.

Captain of the Port (COTP) Zone means a zone specified in 33 CFR part 3 and, for coastal ports, the seaward extension of that zone to the outer boundary of the exclusive economic zone (EEZ).

Dedicated response vessel means a vessel that is designated as an oil spill response vessel in its certificate of inspection, or that is adapted to respond to a discharge of oil or a hazardous substance. Response activities in which such vessels may engage include discharge recovery and transport; tank vessel escorting; deployment of response equipment, supplies, and personnel; and discharge response training, testing, exercises and research.

Exclusive economic zone (EEZ) means the zone contiguous to the territorial sea of the United States extending up to 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

Federal On-scene coordinator (Federal OSC) means the Federal official pre-designated by the Coast Guard or Environmental Protection Agency (EPA) to coordinate and direct response efforts at the scene of a hazardous substance discharge, as prescribed in the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan (NCP)) published in 40 CFR part 300.

Floater means any hazardous substance whose physical and chemical properties, when discharged into water, result in a substance on the water surface that does not rapidly sink, react chemically with water, vaporize, or dissolve.

Great Lakes means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far as Saint Regis, and adjacent port areas.

Hazardous substance means any chemical that is listed in 40 CFR 116.4.

Hazardous substance operations means the storing, transferring, handling, transporting, or lightering of a hazardous substance in bulk in areas subject to the jurisdiction of the United States.

Inland area means either the area shoreward of the boundary lines defined in 46 CFR part 7 or, in the Gulf of Mexico, the area shoreward of the lines of demarcation (COLREG lines) as defined in 33 CFR 80.740 through 80.850. The Great Lakes are not included in the inland area.

Interim operating authorization means authorization granted by the Coast Guard for a vessel to handle, store, transport, transfer, or lighter a hazardous substance without having an approved plan.

Lightering or lightering operation means the transfer of a hazardous substance in bulk from one vessel to another, and includes all phases of the operation from the mooring of the vessel to the departure of the service vessel from the vessel lightered, except when the cargo is intended only for use as ship's stores aboard the receiving vessel.

Nearshore area means either the area extending seaward 12 miles from the boundary lines defined in 46 CFR part 7, or, in the Gulf of Mexico, the area extending seaward 12 miles from the lines of demarcation (COLREG lines) as defined in 33 CFR 80.740 through 80.850.

Offshore area means the area from the outer boundary of the nearshore area seaward 38 nautical miles.

Open ocean area means the area from the outer boundary of the offshore area to the seaward boundary of the exclusive economic zone.

Operating area means any of the following: Rivers and canals, Great Lakes, Inland area, Nearshore area, Offshore area, or Open ocean area.

Operator means the owner, demise charterer, or contractor who operates or is responsible for the operation of a vessel. For the purposes of this subpart only, the operator of a towing vessel is not, per se, considered the operator of a vessel being towed.

Owner or vessel owner means any person holding legal or equitable title to a vessel unless this person holds the title solely as security and not as the owner. It also means the person(s) whose name(s) appears on a vessel's Certificate of Documentation. If the name of a president or secretary of an incorporated company is on the certificate, then the company is the owner.

Personal protective equipment (PPE) means equipment that meets the requirements contained in 29 CFR 1910.120.

Public vessel means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision of the United States, or by a foreign nation, except when engaged in commerce.

Response activity means any actions necessary to minimize or mitigate damage to human health, the environment, or property.

Response area means the area designated by the Federal On-Scene Coordinator in which response activities are occurring.

Response resources means the personnel, equipment, supplies, and other capabilities necessary to perform activities identified in a response plan.

Response resources provider means an entity that provides response personnel, equipment, supplies, and other capabilities necessary to perform activities identified in a response plan.

Rivers and canals means bodies of water confined within the inland area. These include the Intracoastal Waterways and other waterways artificially created for navigation having a project depth of 12 feet or less.

Sinker means any hazardous substance whose physical and chemical properties, when discharged into water, result in a substance in the water that does not float, react chemically with water, rapidly vaporize, or rapidly dissolve.

Spill management team (SMT) means the personnel identified in a response plan who staff the organizational structure that manages response plan implementation. The term Incident Management Team may also be used.

Tank barge means a non-self-propelled tank vessel.

Tank vessel means a vessel that is constructed or adapted to carry, or that

carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(1) Is a vessel of the United States;

(2) Operates on the navigable waters of the United States; or

(3) Transfers a hazardous substance in a place subject to the jurisdiction of the United States.

Tanker means a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous materials in bulk in the cargo spaces.

Vessel crew means:

(1) For tankers—those persons required by a Certificate of Inspection or other official manning document to be on board;

(2) For tank barges—those persons manning both the tank barge and the towing vessel.

Vessel deemed public vessel means any motorboat or yacht, while assigned to authorized Coast Guard duty.

Vessel of opportunity means a vessel that, because of its availability and geographic location, becomes involved in a response to an oil or hazardous substance incident.

Vessels carrying hazardous substances as cargo means all vessels carrying hazardous substances in bulk as cargo or cargo residue, except for dedicated response vessels.

Worst case discharge means a discharge of a vessel's entire hazardous substance cargo during adverse weather.

§ 155.3021 What is a ''contract or other approved means''?

A ''contract or other approved means'' is any of the following methods used to meet the requirements contained in § 155.3035:

(a) A written contract with a response resources provider;

(b) A written certification that the personnel, equipment, and capabilities required by your response plan are available and are under your control;

(c) You have an active membership in a local or regional response resources provider;

(d) You have a document such as a letter, memorandum, or other form of written consent that specifies the agreement you have with a response resources provider and that the provider is capable of and intends to commit to meet your plan requirements. This document must give permission for the Coast Guard to verify the identified response resources and their capabilities through tests, inspections, and exercises;

(e) You have found another way you can comply with the requirements of this section and it is approved by Commandant (G–MOR).

§ 155.3022 What are the requirements for qualified individuals (QI) and alternate qualified individuals and what authority do they have?

(a) You must designate a QI and at least one alternate QI in your response plan. You may designate a third party organization to fulfill the role of the QI and alternate QI. The organization must identify a QI and at least one alternate QI. These individuals must be available on a 24-hour basis.

(b) Qualified individuals and alternates must—

(1) Speak fluent English;

(2) Be located in the United States, except your QI or alternate QI may be located in Canada while your Canadian flag vessel is operating on the Great Lakes or the Strait of Juan de Fuca and Puget Sound, WA;

(3) Be familiar with the implementation of your plan;

(4) Meet the training requirements contained in 29 CFR 1910.120(q)(6)(v), to include the capabilities contained in Appendix E, 29 CFR 1910.120, in the section entitled ''Suggested Training Curriculum Guidelines'', in paragraph C.b.(5) entitled ''Incident commander.''

(c) You must designate each QI and alternate QI in writing. In your designation document you must specify that the QI—

(1) Has full authority to implement actions to contain, remove, or otherwise minimize or mitigate damage to the public health, the environment, and public property;

(2) Is able to immediately and continuously communicate with the Federal OSC and persons providing resources and equipment, as needed;

(3) Is authorized to contracting and obligate funds to carry out response activities; and

(4) Is adequately trained and experienced to carry out the responsibilities of the QI.

(d) The qualified individual's liability is covered in 33 U.S.C. 1321(c)(4).

(e) As soon as is practicable after a discharge or incident resulting in a substantial threat of a discharge, the QI will provide the Federal OSC with the name of the individual who will direct response activities and act as the owner or operator's incident commander, if other than the QI.

§ 155.3025 When may I engage in hazardous substance operations?

(a) If you submit a plan prior to [6 months after publication of Final Rule], you may conduct hazardous substance operations pending receipt of interim operating authorization. These operations must be conducted in accordance with your plan.

(b) If you are awaiting approval of a submitted plan and have received interim operating authorization from the Coast Guard, then you may conduct hazardous substance operations for up to two years after the date your plan was submitted, and if your vessel is fully certificated for its intended service.

(c) If you have an approved plan, and your vessel is fully certificated for its intended service, then your vessel may engage in hazardous substance operations.

(d) Your vessel may not conduct hazardous substance operations if—

(1) You have not submitted a plan to the Coast Guard prior to [6 months after publication of Final Rule];

(2) The Coast Guard determines that the response resources referenced in your plan do not substantially meet the requirements of this subpart;

(3) The contracts or agreements cited in your plan have lapsed or are otherwise no longer valid;

(4) You are not operating in accordance with your plan;

(5) The interim operating authorization under paragraph (b) of this section has expired; or

(6) The plan's approval has expired.

§ 155.3026 How do I obtain an interim operating authorization or a one-time authorization?

(a) To obtain an interim operating authorization, you must submit a written request to Commandant (G–MOR) certifying that you have identified and ensured available, by contract or other approved means, the private response resources necessary to respond to a worst case hazardous substance discharge or substantial threat of such a discharge. The interim operating authorization will allow you to conduct hazardous substance operations only in the geographic area covered by your plan.

(b) If you would like your vessel to conduct hazardous substance operations in a geographic area not covered by your plan, then you must get a one-time authorization from the applicable COTP to do so.

(c) To receive a one-time authorization you must submit a written request to the applicable COTP certifying that you have—

(1) An approved hazardous substance response plan or interim operating authorization aboard the vessel(except for the applicable geographic specific appendix);

(2) Given the name of the QI to the master of the vessel and the COTP; and

(3) Identified and ensured available, by contract or other approved means, the private response resources necessary

to respond to a worst case discharge or substantial threat of such a discharge in the area in which you seek to have the vessel operate.

§ 155.3030 What is the general format of a response plan?

(a) Your response plan must—

(1) Identify and cover all geographic areas of the United States where your vessel will conduct hazardous substance operations;

(2) Be written in English and the languages understood by crew members with responsibilities under the plan;

(3) Have the following sections:

(i) General information;

(ii) Notification procedures and list of contacts;

(iii) Risk based decision support process;

(iv) Shipboard mitigation procedures;

(v) Shore-based response organization;

(vi) Training procedures;

(vii) Exercise procedures;

(viii) Geographic—specific appendix for each COTP zone where your vessel(s) operates;

(ix) Vessel(s)—specific appendix for each vessel covered by the plan;

(x) An appendix for each hazardous substance aboard the vessel; and

(4) Have an on-board notification checklist and emergency procedures (tank barges only).

(b) Your response plan must be divided into the sections described in paragraph (a)(3) of this section unless your plan is supplemented by a cross-reference table showing the location of required information.

(c) Your plan must be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and the Area Contingency Plan (ACP) in effect six months prior to the submission of your plan.

§ 155.3031 May I augment my vessel response plan for oil with hazardous substance response information?

Yes, you may augment your existing vessel response plan for oil with requirements that are specific to this subpart.

§ 155.3032 How many copies of the plan must I have, and where must they be maintained?

(a) You must maintain a current copy of the complete plan. You must provide a copy to each qualified individual and alternate.

(b) A copy of the following plan sections must be maintained on board your vessel:

Type of tank vessel	Required plan sections	Approval letter (Notarized copy authorized)
Tanker	§ 155.3030(a)(3)(i)–(iv) and (viii)–(x)	Yes.
Tank Barge	§ 155.3030(a)(3)(x), (4)	Yes.

§ 155.3035 What are the required contents of each section of the plan?

(a) *General information*. This section of the plan must include all of the following:

(1) A list of vessels covered by the plan;

(2) A list of COTP zones in which the vessel intends to conduct hazardous substance operations;

(3) A table of contents or index of sufficient detail to permit any user to find a specific section of the plan; and

(4) A ''Record of Changes'' page to record information on plan reviews, updates, or revisions.

(b) *Notification procedures and list of contacts.* This section of the plan must include notification or contact information. If the notifications vary due to vessel location, persons to be notified may be listed in a geographic-specific appendix. This section of the plan must also provide all of the following:

(1) The primary and secondary communication methods to be used in making notifications;

(2) A checklist showing all notifications required by MARPOL 73/78, 33 CFR part 153, and any appropriate State and designated local authorities. This checklist must include 24-hour telephone numbers or other notification methods and the information required for those notifications. The checklist must also specify notifications to be made by shipboard personnel and shore-based personnel;

(3) The procedures for notifying all of the following:

(i) Qualified individual and alternate;

(ii) Incident commander (if other than the QI);

(iii) Vessel owner or operator;

(iv) Vessel's local agent;

(v) Person(s) able to assess a vessel's seaworthiness; and

(vi) Transfer facility (if applicable);

(4) The incident commander must have the capability of arriving at the incident command post, if established, or at the immediate vicinity of the incident within a reasonable time-frame; and

(5) Information that must be provided in initial and follow-up notifications is:

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(i) Initial notification information.
(A) Tank vessel name, country of registry, call sign, and official number;
(B) Towing vessel name;
(C) Date and time of incident;
(D) Location of the incident;
(E) Course, speed, and intended track of vessel;
(F) Radio stations and frequencies guarded;
(G) Date and time of next report;
(H) Names and quantities of hazardous substances on board;
(I) Nature and detail of defects, deficiencies, and damage (e.g. grounding, collision, hull failure, etc.);
(J) Details of pollution, including estimate of the quantity of hazardous substance discharged or whether a threat of discharge exists;
(K) Weather/sea conditions on scene;
(L) Tank vessel size and type;
(M) Actions taken or planned by persons on scene;
(N) Current conditions of vessel;
(O) Number of crew and details of injuries; and
(P) Other appropriate information.
(ii) Follow-up notification information.
(A) Additional details on cargo on board;
(B) Additional details on the condition of the tank vessel and ability to transfer cargo, ballast, and fuel;
(C) Additional details on the quantity, extent, movement and fate and effect of the pollution and whether discharge is continuing;
(D) Any changes in on scene weather or sea conditions;
(E) Actions being taken with regard to the discharge and the movement of the tank vessel; and
(F) Other appropriate information essential for the protection of human populations and the marine environment.

Note to paragraph (b)(5): For tankers, the initial notification may be submitted in accordance with IMO Resolution A.648(16) "General Principles for Ship Reporting Systems and Ship Reporting Requirements" which is available through COMDT (G-MSO-4), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001.

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(c) *Risk based decision support processes.* This section of your plan must outline processes which will help responders make decisions relating to the identification, evaluation, and control of risks to human health and the environment following a hazardous substance discharge. These outlined processes do not need to be scenario specific, but can be generic in nature. This section of the plan may take the form of a decision tree, an automated decision support system, or any other format that meets the elements described in this paragraph. As a minimum, the process must include all of the following:

(1) *Risk identification* which describes the process which will be used to determine the extent and route of hazardous substance exposure to humans and the environment;

(2) *Risk evaluation* which describes the process which will be used to establish relative degrees of risk and prioritizing risks;

(3) *Risk control* which describes the process which will be used to determine which response methods are feasible to eliminate or reduce impacts of the hazardous substance discharge on humans and the environment likely to be exposed; and

(4) *Risk communication* which describes the process which will be used to communicate information resulting from paragraphs (c)(1), (2), and (3) of this section to parties internal and external to response activities.

(d) *Shipboard mitigation procedures.* This section of your plan must contain prioritized procedures necessary to protect the vessel's crew, and mitigate, control or prevent the discharge of a hazardous substance. Paragraphs (d)(1) through (4) of this section include the requirements for shipboard mitigation procedures.

(1) All plans must include procedures for—

(i) Crew safety, and if applicable, the use of personal protective equipment;

(ii) Crew responsibilities by job title;

(iii) Crew actions while conducting internal or external cargo transfers during a transfer system leak, overflow, or a suspected cargo tank or hull leak;

(iv) Crew actions during casualties or emergencies which include grounding or stranding, collision, explosion or fire (or both), hull failure, excessive list, or equipment failure such as main propulsion, steering gear, etc.;

(v) Internal or tank to tank transfers of cargo in an emergency (if applicable to type of vessel);

(vi) Emergency ship-to-ship cargo transfers. (Procedures must be consistent with the vessel's transfer procedures, lightering plan, and safety considerations.);

(vii) Arrangements for emergency towing, to include rigging requirements and operating procedures of any emergency towing equipment; and

(viii) The vessel crew to gather information that must be provided to shore-based personnel who will conduct damage stability and hull stress assessments.

(2) If your crew will engage in shipboard mitigation measures, then include:

(i) The identification and description of the activities that the crew has been trained in and are qualified to do when the crew does not have shore-based support.

(ii) Crew responsibilities to mitigate a hazardous substance discharge. You must include procedures for use of vessel equipment and personal protective equipment carried on board.

(3) If your crew will initiate a shore-based response (beyond required notifications), then include crew responsibilities to initiate a shore-based response, and the crew's supervision responsibilities of the shore-based response resources.

(4) If your crew will conduct air sampling/monitoring or water sampling/monitoring, then include crew responsibilities for recordkeeping and sampling of spilled hazardous substances, personal protective equipment requirements, and safety procedures during the sampling/monitoring operation.

(e) *Shore-based response organization.* This section of your plan must include the following:

(1) The authority and responsibilities of the qualified individual. The authority must allow for immediate and continuous communication with the Federal OSC and notification/activation of the hazardous substance response resource provider(s).

(2) Procedures for transferring the responsibility for direction of response activities from the vessel crew to the qualified individual or incident commander, if other than the QI.

(3) Procedures for coordinating all response actions with the Federal OSC who oversees or directs those actions.

(4) The organizational structure to be used to manage response actions. This structure must outline the key roles and responsibilities of the following functional areas:

(i) Command and control (incident commander);

(ii) Public information;

(iii) Safety;

(iv) Liaison with government agencies and other agencies as appropriate;

(v) Response operations;

(vi) Planning;

(vii) Logistics support; and

(viii) Finance.

(5) You must list the responsibilities, duties, and functional job descriptions for each position of the spill management team that is part of the organizational structure described in paragraph (e)(4) of this section.

(6) You must list individuals with the following specific technical specialties that are available on a 24 hour-a-day basis for integration into the spill management team, as needed:

(i) Product specialist;

(ii) Toxicologist;

(iii) Certified marine chemist;

(iv) Chemist or chemical engineer; and

(v) Certified industrial hygienist.

(7) You will satisfy the requirements of paragraphs (e) (1) through (5) of this section if you design your spill management team in accordance with the U.S. Coast Guard adopted National Inter-agency Incident Management System (NIIMS) Incident Command System (ICS).

(f) *Training.* (1) You must identify the training required for personnel having responsibilities under the response plan.

(2) You must differentiate between that training provided to vessel personnel and shore-based personnel.

(3) You must document the training of your personnel and make your training records available when requested by the Coast Guard. This applies to both initial and refresher training, as applicable. Records must be maintained for 3 years following completion of training.

(4) Nothing in this paragraph (f) relieves you from the responsibility to ensure that private shore-based response personnel are trained to meet the Occupational Safety and Health Administration (OSHA) standards for emergency response operations in 29 CFR 1910.120.

(5) This paragraph (f) does not apply to the individuals listed in paragraph (e)(6) of this section.

(g) *Exercise procedures.* This section of the plan addresses your exercise program. These exercises should help to ensure that your plan will function in an emergency. Your exercise program must detail the types of exercises, frequencies, scopes, objectives, and the scheme for exercising your entire response plan every three years. You must include announced and unannounced exercises in your plan.

(1) Minimum exercise requirements are:

Exercise type	Frequency	Comments
(i) Qualified individual notification	Quarterly.	
(ii) Emergency procedures	Quarterly	See note.
(iii) Spill management team tabletop	Annually	In a 3-year period, one exercise must include a worst case discharge scenario for hazardous substances. See note.
(iv) Response resource provider equipment deployment.	Annually	See note.
(v) Entire response plan	Every 3 years	You must design your exercise program so that every component of the plan is exercised at least once every 3 years. You may exercise the components all at once. The components may be exercised via the required exercises or via an area exercise.

Note to paragraph (g)(1) table: One of these exercises must be unannounced in the three year exercise cycle.

(2) You must participate in unannounced exercises, as directed by the COTP. The objectives of these exercises are to verify the ability and evaluate the performance of shipboard personnel in fulfilling their emergency-related responsibilities under the plan. These exercises will be limited to four per area per year. After participating in an unannounced exercise, you will not be required to participate in another unannounced exercise for at least 3 years from the date of the exercise.

(3) You must participate in area exercises as directed by the Federal OSC. The area exercises will involve those actions necessary to respond to the spill scenario developed by the exercise design team, of which you will be a member. After participating in an area exercise, you will not be required to participate in another area exercise for at least 6 years.

(4) You must maintain adequate exercise records as follows:

(i) Records of the qualified individual notification exercises and the emergency procedures exercises must be maintained on the vessel. You may document these exercises in the ship's log or in a separate exercise log.

(ii) Exercise records must be maintained and available to the Coast Guard for 3 years following completion of the exercises.

(5) For holders of approved oil response plans augmented for hazardous substances, oil and hazardous substances exercises are interchangeable. However, a minimum of 25 percent to a maximum of 75 percent of all exercises must be for hazardous substances.

(6) You may satisfy the exercise response plan requirements by complying with the National Preparedness for Response Exercise Program (PREP) Guidelines issued by Commandant (G–MOR). These guidelines are available from the United States Government Printing Office, North Capitol and H Sts., NW., Washington, DC 20402.

(h) *Geographic-specific appendix for each COTP zone in which your vessel(s) operates.* This section of your plan must include a geographic-specific appendix for each COTP zone where your vessel intends to conduct hazardous substance operations.

(1) Each appendix must identify the geographic area(s) within each COTP zone where your vessel intends to operate.

(2) For each COTP zone, you must ensure available, through contract or other approved means, the following response resources to be on-scene within the time-frames indicated from the detection of the discharge and the 24-hour point of contact for the provider of each resource. (NOTE: The response resources contained in paragraphs (h)(2)(i)–(iv) of this section are required when operating in the inland, river and canal, and Great Lakes operating areas.)

(i) Air monitoring in accordance with 29 CFR 1910.120—2 hours.

(ii) Water sampling—2 hours.

(iii) Personal protective equipment—2 hours.

(iv) Modeling capabilities available to include dispersion modeling (water and air)—2 hours.

(v) Lightering resources capable of providing the following equipment and services at your vessel's location within the prescribed time-frame:

If your lightering resource must provide the following equipment and/or services * * *	And your vessel is located in one of the areas listed, then the equipment and/or services must be at your vessel's location within the time-frame indicated:
(A) Lightering equipment (see note):	
(*1*) Fendering equipment	Inland, nearshore and Great Lakes waters—12 hours. Offshore waters and Rivers and canals—18 hours. Open ocean waters—36 hours.
(*2*) Portable pumps and ancillary equipment necessary to offload vessel's cargo tank in 24 hours of continuous operation.	The same as (A)(*1*) above.
(*3*) Transfer hoses and connection equipment	The same as (A)(*1*) above.
(B) Access to lightering specialists and mooring masters	Any operating area—24 hours.
(C) Access to barge brokers or other entities that can assist in identifying available barges that can be used as lightering vessels.	Any operating area—24 hours.

Note to paragraph (h)(2)(v) table: For tankers the equipment must be onboard.

(vi) Marine firefighting resources with equipment that have the capability to be on-scene within 24 hours.

(vii) Salvage resources that can respond within 24 hours and have the capability to access the necessary salvage equipment.

(3)(i) If you transport a hazardous substance that exhibits the characteristics of a ''floater'', then you must list the following response

resources capable of being on-scene within 24 hours of detection of the discharge and the 24-hour point of contact for the provider of each resource:

(A) Sorbent and containment boom;

(B) Recovery devices; and

(C) 10,000 feet of inland boom for shoreline protection operations.

(ii) Resources listed in oil response plans will meet the requirement of paragraph (h)(3)(i) of this section.

(4) If you transport a hazardous substance that exhibits the characteristics of a ''sinker'', then you must list the following response resources capable of being on-scene within 24 hours of detection of the discharge and the 24-hour point of contact for the provider of each resource:

(i) Sorbent boom, containment boom, silt curtains, or other equipment to contain hazardous substances that may remain floating on the surface or to reduce spreading on the bottom;

(ii) Dredges, pumps, or other equipment necessary to recover hazardous substances from the bottom and shoreline;

(iii) Chemical detection devices, such as sonar or sampling equipment; and

(iv) In situ treatment equipment as deemed appropriate by the plan-holder.

(5) The listed response resource providers must meet the equipment criteria contained in § 155.3050. Response resource providers must provide trained personnel to operate equipment, and staff their organization and the spill management team for the first 7 days of the response.

(i) *Vessel(s)-specific appendix for each vessel covered by the plan.* This section of the plan must include:

Required information (where applicable)	Comments
(1) Vessel's name, Country of registry, Call sign, Official number, International Maritime Organization (IMO) international number.	If the plan covers multiple vessels, then this information must be provided for each vessel.
(2) List of the vessel's principal characteristics	See note.
(3) Capacities of all cargo, fuel, lube oil, ballast, and fresh water tanks	See note.
(4) Diagrams showing locations of all tanks Vessel plans and information: (i) General arrangement plan. (ii) Midships section. (iii) Cargo and fuel piping diagrams and pumping plan. (iv) Cargo and fuel storage plan.	Can be maintained separately aboard the vessel provided the response plan identifies location. See note.
(5) Location of all equipment and fittings used to perform transfers and lightering.	See note.
(6) Location of equipment and personal protective equipment carried to mitigate a hazardous substance discharge.	See note.
(7) Damage stability data: Locations of plans to perform salvage, stability, and hull stress assessments. These include the general arrangement plan, midship section plan, lines plan or table of offsets, tank tables, load line assignment, and lightship characteristics.	You must maintain a copy of these plans ashore. The vessel's owner or operator or the vessel's classification society may maintain these plans unless you have arranged for a shore-based damage stability and residual strength calculation program with your vessel's baseline strength and stability characteristics pre-entered. If the computerized damage stability calculation program is utilized, then you must provide in the plan the shore location and 24-hour access procedures of the calculation program.

Note to paragraph (i) table: Because many of the tank vessels covered by a response plan may be of the same design, you do not need to repeat this information provided the plan identifies the tank vessels to which the same information applies.

(j) *Hazardous substance specific appendix.* This section of the plan must include a separate appendix for each hazardous substance cargo on board your vessel. The following table represents the types of information which must be included, if pertinent:

Information categories	Types of information
(1) NAME OF HAZARDOUS SUBSTANCE	Common Chemical Name, Synonym(s), and Trade Name(s)
(2) CAUTIONARY RESPONSE INFORMATION	First Response Activities for Fire, Exposure, and Water Pollution Physical Description Telephone Number for Medical Treatment
(3) CHEMICAL DESIGNATIONS	CAS Registry Number. CG Compatibility Class. DOT ID No. Formula. IMO/UN Designation. NAERG Guide Number. Standard International Trade Classification.
(4) HEALTH HAZARDS	Chronic Toxicity. EPS AEGL. IDLH Value. Irritant Characteristics (Liquid, solid, or vapor (gas)). Odor threshold. OSHA PEL–CEILING. OSHA PEL–STEL. OSHA PEL–TWA. PPE. Symptoms Following Exposure. TLC–Ceiling. TLV–STEL. TLV–TWA. Toxicity by ingestion.

Information categories	Types of information
	Toxicity by inhalation.
	Treatment of exposure.
(5) FIRE HAZARDS	Adiabatic Flame Temperature.
	Behavior in Fire.
	Burning Rate.
	Electrical Hazard.
	Fire Extinguishing Agents.
	Fire Extinguishing Agents Not to be Used.
	Flame Temperature.
	Flammable Limits in Air.
	Flash Point.
	Ignition Temperature.
	Minimum Oxygen Concentration for Combustion (MOCC).
	Molar Ratio.
	Special Hazards of Combustion Products.
	Stoichiometric Air to Fuel Ratio.
(6) CHEMICAL REACTIVITY	Inhibitor of Polymerization.
	Neutralizing Agents for Acids and Caustics.
	Polymerization.
	Reactivity with Common Materials.
	Reactivity with Water.
	Stability During Transport.
(7) WATER POLLUTION	Aquatic Toxicity.
	Biochemical Oxygen Demand (BOD).
	Food Chain Concentration Potential.
	GESAMP Hazard Profile.
	Waterfowl Toxicity.
(8) SHIPPING INFORMATION:	Barge Hull Type
	Grades of Purity.
	IMO Pollution Category.
	Inert Atmosphere.
	Ship Type.
	Storage Temperature.
	Venting.
(9) HAZARD CLASSIFICATIONS	49 CFR Category.
	49 CFR Class.
	49 CFR Package Group.
	EPA FWPCA List.
	EPA Pollution Category.
	EPA Reportable Quantity.
	Marine Pollutant.
	NFPA Hazard Classification.
	RCRA Waste Number.
(10) PHYSICAL AND CHEMICAL PROPERTIES.	Boiling Point at 1 atm.
	Critical Pressure.
	Critical Temperature.
	Freezing Point.
	Heat of Combustion.
	Heat of Decomposition.
	Heat of Fusion of Polymerization.
	Heat of Solution.
	Latent Heat of Vaporization.
	Limiting Value.
	Liquid Surface Tension.
	Liquid Water Interfacial Tension.
	Molecular Weight.
	Physical State.
	Ratio of Specific heats of Vapor (Gas).
	Reid Vapor Pressure Heat.
	Specific Gravity.
	Vapor (Gas) Specific Gravity.

(k) *On board notification checklist and emergency procedures (for tank barges only).* The checklist and emergency procedures must include—

(1) The telephone number of the National Response Center;

(2) The name of a QI and one alternate QI and the procedures to contact them on a 24-hour basis;

(3) The name and address of the vessel's owner or operator and the procedures for contacting the owner or operator on a 24-hour basis;

(4) The list of information to be provided in the notification by the reporting personnel;

(5) A statement of responsibilities and actions to be taken by reporting personnel after a hazardous substance discharge or substantial threat of one;

(6) A list of responsibilities of the crew; and (7) A statement addressing the crew's safety and personal protective equipment needs.

§ 155.3050 What are the operating criteria that apply to response resource equipment?

(a) If you conduct hazardous substance operations with substances that have the characteristics of a ''floater'' or ''sinker'', then the containment boom and recovery devices listed under § 155.3035(h)(3) and (4) must meet the following criteria:

(1) Table 1 must be used to identify appropriate hazardous substance recovery devices in the response plan. These criteria reflect conditions used for planning purposes to select mechanical response equipment. They are not conditions that would limit response actions or affect a vessel's normal operations. Table 1 follows:

TABLE 1.—RESPONSE RESOURCE OPERATING CRITERIA HAZARDOUS SUBSTANCE RECOVERY DEVICES

Operating area	Significant wave height [1] (in feet)	Sea state
Rivers and Canals	≤1	1
Inland	≤3	2
Great Lakes	≤4	2–3
Nearshore, Offshore, Open Ocean	≤6	3–4

BOOM

Boom	Use			
	Rivers and canals	Inland	Great Lakes	Nearshore, offshore, open ocean
Significant Wave Height	≤1	≤3	≤4	≤6
Sea State	1	2	2–3	3–4
Boom Height—in (draft plus freeboard)	6–18	18–24	18–24	≥24
Reserve Buoyancy to Weight Ratio	2:1	2:1	2:1	3:1 to 4:1
Total Tensile Strength—lbs	4,500	15–20,000	15–20,000	≥20,000
Skirt Fabric Tensile Strength—lbs	200	300	300	500
Skirt Fabric Tear Strength—lbs	100	100	100	125

[1] Recovery devices and boom must be at least capable of operating in wave heights up to and including the values listed in Table 1 for each operating area.

(2) When evaluating operability of response equipment you must consider limitations identified in the Area Contingency Plans for the COTP zones in which your vessel operates, including —

(i) Ice conditions;

(ii) Debris;

(iii) Temperature ranges;

(iv) Weather-related visibility.

(b) The COTP may reclassify a specific body of water or location within the COTP zone. Any reclassifications will be listed in the Area Contingency Plan. Reclassifications may be to—

(1) A more stringent operating area if the prevailing wave conditions exceed the significant wave height criteria during more than 35 percent of the year; or

(2) A less stringent operating area if the prevailing wave conditions do not exceed the significant wave height criteria for the less stringent operating area during more than 35 percent of the year.

(c) Response equipment must—

(1) Meet or exceed the criteria listed in table 1 of (a)(1) of this section;

(2) Be capable of functioning in the applicable operating area;

(3) Be appropriate for the hazardous substance carried; and

(4) Be periodically inspected and maintained in accordance with manufacturer's recommendations and best commercial practices. All inspections and maintenance must be documented and these records must be maintained for 3 years.

§ 155.3055 How must I certify that my response resources providers are capable of meeting plan requirements?

(a) Your plan must include the original written certification of the following:

(1) You have evaluated the risks associated with the worst case discharge of a hazardous substance you carry;

(2) You have contracted or listed, as appropriate, the resources that you have determined are necessary to effectively respond to a worst case hazardous substance discharge or threat of such discharge, and that the response resource providers you listed in your plan have acknowledged being listed;

(3) You have determined that the technical expertise of the response providers is adequate to carry out the planned response requirements.

(b) This certification must be signed by the owner or operator of the vessel.

§ 155.3065 What are the procedures for plan submission and receiving approval?

(a) You must submit your plan to Commandant (G–MOR), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. Your plan must—

(1) Be complete and in English;

(2) Be submitted at least 60 days before your vessel intends to perform hazardous substance operations;

(3) Include a statement certifying that your plan meets the requirements of this subpart; and

(4) Include a statement noting the plan covers either manned or unmanned vessels.

(b) If your plan is approved, then the Coast Guard will send you an approval letter. Your plan will be valid for up to 5 years from the date the plan was submitted.

(c) If your plan is reviewed and not approved, then you will receive written notification of your plan's deficiencies. You must submit a revised plan or the corrected portions within the time period specified in the Coast Guard's notice.

(d) If you have received interim operating authorization per § 155.3026,

then the provisions of § 155.3070(c), (d), and (f) apply.

§ 155.3066 What are the procedures for submitting a request for acceptance of alternative planning criteria?

If you believe that national planning criteria contained elsewhere in this part are not applicable to your vessel for the areas in which you wish to operate, then you may request the Coast Guard to accept alternative planning criteria. Your request must be made 90 days before your vessel operates under the proposed alternative, and must be forwarded via the COTP of the geographic area(s) affected.

§ 155.3067 How do I submit an appeal if my response plan is not approved?

If you have been notified that your plan is not approved, then you have 21 days following notification to submit a written appeal of the Coast Guard's decision. Your appeal must be submitted to Commandant (G–M), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

§ 155.3070 What are the procedures for plan review, revision, resubmission, and appeal?

(a) You must review your plan—

(1) Annually within one month of the anniversary date of the Coast Guard's approval of your plan; and

(2) After a drill or hazardous substance discharge to evaluate and validate the plan's effectiveness.

(b) After review of your plan, you must submit any amendments or revisions to the Coast Guard for information or approval. A cover page that provides a summary of the changes and the pages affected must be included with the revisions. The revised pages must be annotated with the revision number and effective date of the revision. You must note on the record of changes page what changes were made and the date they were made. You must also note the completion of the annual review on the record of changes page.

(c) You must submit revisions or amendments to your plan whenever any of the following occur:

(1) A change in the owner or operator if that person is not the one who provided the certifying statement required by § 155.3055(a) or § 155.3065(a);

(2) A change in your vessel's operating area that is not covered by your plan. Your vessel may operate in this new area once you have received confirmation from the Coast Guard that you have submitted a new geographic-specific appendix for approval and the certification required in § 155.3026(a);

(3) A significant change in your vessel's configuration that affects the information in your response plan;

(4) A change in the cargo your vessel carries, except when you are authorized by the COTP to carry this cargo as a result of assisting in a discharge response activity;

(5) A change in response resources required by § 155.3050;

(6) A significant change in your vessel's emergency response procedures;

(7) A change in the qualified individual or alternate;

(8) The addition of a vessel to your plan. You must submit the vessel-specific appendix and certification required in § 155.3026(a); or

(9) Any other changes that affect the implementation of the plan.

(d) At least 30 days in advance of hazardous substance operations, you must submit any revisions or amendments identified in paragraph (c) of this section. You must submit certification as required by § 155.3055(a) or § 155.3065(a) with the revisions or amendments.

(e) You must resubmit your entire plan to the Coast Guard for approval—

(1) Six months before the end of the current approval period identified in § 155.3065(b); and

(2) When the owner or operator changes, if that owner or operator provided the certifying statement required by § 155.3065(a) a new certifying statement must be submitted.

(f) The Coast Guard may require you to revise your response plan if it is determined that your plan does not meet the requirements of this subpart. The Coast Guard will provide to you written notification of any deficiencies and any operating restrictions. Deficiencies must be corrected and submitted for acceptance within the specified timeframe provided by the Coast Guard or your plan will be declared invalid. If you conduct any hazardous substance operations after your plan has been declared invalid, then you will be in violation of the Clean Water Act (CWA) (33 U.S.C. 1321(j)(5)(E)).

(g) If you disagree with a deficiency determination, you may submit a petition for reconsideration to Commandant (G–M), U. S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, within the time period required for compliance or within 7 days from the date of receipt of the Coast Guard notice of a deficiency determination, whichever is less. After considering all relevant material presented, the Coast Guard will notify you in writing of the final decision.

(1) Unless you petition for reconsideration of the Coast Guard's decision, you must correct the response plan deficiencies within the period specified in the Coast Guard's initial determination.

(2) If you petition the Coast Guard for reconsideration, the effective date of the Coast Guard notice of deficiency determination may be delayed pending their decision. Petitions to the Coast Guard must be submitted in writing, via the Coast Guard official who issued the requirement to amend the response plan, within 7 days of receipt of the notice.

(h) You must advise the Coast Guard and all other holders of the response plan of any revisions to personnel and telephone numbers and provide a copy of these revisions. Amendments to personnel and telephone number lists included in the response plan do not require prior Coast Guard approval, except as required in paragraph (c) of this section.

Dated: February 16, 1999.

James M. Loy,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 99–4697 Filed 3–19–99; 8:45 am]

BILLING CODE 4910–14–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

Accessibility Guidelines for Outdoor Developed Areas; Meeting of Regulatory Negotiation Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Regulatory negotiation committee meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered outdoor developed areas covered by the Americans with Disabilities Act and the Architectural Barriers Act. This document announces the dates, times, and location of the next meeting of the committee, which is open to the public.

DATES: The committee will meet from Tuesday, April 27,1999, to Friday, April 30, 1999, 8:30 a.m. to 5:00 p.m. each day.

ADDRESSES: The committee will meet at the National Highway Institute, Training

and Conference Center, 4600 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–5434 extension 34 (Voice); (202) 272–5449 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disc) upon request. This document is also available on the Board's web site (http://www.access-board.gov/rules/outdoor.htm).

SUPPLEMENTARY INFORMATION: In June 1997, the Access Board established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered outdoor developed areas covered by the Americans with Disabilities Act and the Architectural Barriers Act. (62 FR 30546, June 4, 1997). The committee will hold its next meeting on the dates and at the location announced above. The meeting is open to the public. The meeting site is accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Peggy Greenwell by April 9, 1999, by calling (202) 272–5434 extension 34 (voice) or (202) 272–5449 (TTY).

Lawrence W. Roffee,

Executive Director.

[FR Doc. 99–6924 Filed 3–19–99; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE011/021–1031; FRL–6313–1]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Reasonably Available Control Technology Requirements for Nitrogen Oxide Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing conditional limited approval of a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision requires major sources of nitrogen oxides (NO_X) in the State of Delaware to implement reasonably available control technology (RACT). The intended effect of this action is to propose conditional limited approval of Delaware regulation for imposing RACT on major sources of NO_X.

DATES: Comments must be received on or before April 21, 1999.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M. Street, S.W., Washington, D.C. 20460; and Delaware Department of Natural Resources & Environmental Control, Richardson & Robins, 89 Kings Highway, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, at the EPA Region III address above, or via e-mail at quinto.rose@epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address in accordance with the procedures provided above.

SUPPLEMENTARY INFORMATION: On January 11, 1993, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted Regulation No. 12 CONTROL OF NITROGEN OXIDE EMISSIONS as a revision to its SIP. On November 26, 1993 (58 FR 62307), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Delaware. The NPR proposed limited approval/limited disapproval of Regulation No. 12 pertaining to the control of NO_X emissions at major sources in the state. On January 20, 1994, DNREC submitted a SIP revision which amended Regulation No. 12. EPA is hereby withdrawing the NPR published on November 26, 1993 and reproposing conditional limited approval of this Delaware SIP revision. This action is being taken under Section 110 of the Clean Air Act (CAA).

I. Background

Pursuant to Part D, Sections 182 and 184 of the CAA, RACT is to be implemented at all major NO_X sources by no later than May 31, 1995. A major source of NO_X is defined by the classification of the ozone nonattainment area in which it is located and/or whether it is located in the ozone transport region (OTR) established by the CAA. The entire State of Delaware is located in the OTR, and RACT applies statewide. New Castle and Kent Counties are part of the Philadelphia-Wilmington-Trenton ozone nonattainment area which is classified as severe. For New Castle and Kent Counties, CAA Section 182 defines all stationary sources with the potential to emit 25 tons per year (TPY) or more of NO_X as major and requires that RACT be implemented at such sources by no later than May 31, 1995. For Sussex County, CAA Section 184 defines all stationary sources with the potential to emit 100 TPY or more of NO_X as major and requires that RACT be implemented at such sources by no later than May 31, 1995.

II. Description of the Delaware Regulation No. 12 Imposing RACT on Major Sources of NO_X

NO_X Emission Standards Requirements

Delaware Regulation No. 12, Section 3.2 contains specific emission limits for fuel burning equipment with a rated heat capacity of 100 million BTU (MMBTU) per hour or greater. Gas fired face and tangential units are required to meet an emission limit of 0.20 lbs of NO_X/MMBTU input. Oil or gas fired face and tangential units are required to meet an emission limit of 0.25 lbs of NO_X/MMBTU input. Oil or gas fired cyclones are required to meet an emission limit of 0.43 lbs of NO_X/MMBTU input. Dry bottom coal fired face and tangential units are required to meet an emission limit of 0.38 lbs of NO_X/MMBTU input. Dry bottom coal fired stokers are required to meet an emission limit of 0.40 lbs of NO_X/MMBTU input. These numerical emission limits are supported by data gathered by the State and Territorial Air Pollution Program Administrators (STAPPA) and Association of Local Air Pollution Control Officials (ALAPCO).

All emission limits are required to be met on a 24-hour rolling averaging period. For sources with a rated heat input capacity of 250 MMBTU/hr or more compliance shall be determined using continuous emission monitoring systems (CEMs) approved by DNREC. For sources with a rated heat input of greater than 150 MMBTU/hr but less than 250 MMBTU/hr compliance shall be determined using continuous emission monitoring systems (CEMs) approved by DNREC, or by an enhanced monitoring program approved by DNREC which identifies and correlates various operating parameters with NO_X emission levels thorough source testing. These parameters will be used as surrogates to monitor NO_X emissions.

Periodic source testing will be required to verify the validity of these surrogate parameters.

Regulation No. 12, Section 3.5 also contains specific emission limits for gas turbines. The emission limit for gas fired simple or combined cycle gas turbines, corrected to 15% oxygen, is 42 parts per million (ppm). The emission limit for liquid fired simple or combined cycle gas turbines, corrected to 15% oxygen, is 88 ppm. Both emission standards require compliance to be demonstrated using a one hour averaging period based on CEM or an alternative method approved by DNREC and EPA.

NO_X Technology Standards Requirements

Regulation No. 12, Section 3.2 also includes control technology provisions for fuel burning equipment with a rated heat input capacity of 100 MMBTU/hr or greater, existing fuel burning equipment shall be presumed to be RACT if the owner or operator demonstrates that emission limitations specified in Section 3.2 (and described above) can be met. If the owner or operator does not make this demonstration, RACT shall be installed to meet the specified emission limits of Section 3.2. RACT for such sources will consist of combustion modification technology including either low NO_X burner technology with low excess air (including Over Fire Air if technically feasible), or flue gas recirculation with low excess air. Regulation No. 12, in Section 3.3, requires that emissions from fuel burning equipment with a rated capacity of 50 MMBTU/hr or greater shall not exceed those achieved by installation of either low NO_X burner technology with low excess air, or an equivalent control technology approved by DNREC and EPA. Section 3.3 requires emissions from fuel burning equipment with a rated capacity of less than 50 MMBTU/hr shall not exceed those achieved through an annual tune up performed by a qualified personnel. A log must be maintained of the tune ups performed on each unit.

Regulation No. 12, Section 3.4 requires stationary internal combustion engines to limit their emissions to no more than those emitted using pre-ignition chamber combustion (also referred to as clean burn technology) for gas fired units and those emitted when using lean burn technology for diesel fired units, or equivalent control technology approved by DNREC and EPA.

In Section 3.6, seasonal fuel switching shall be considered RACT for sources opting to switch to a lower NO_X emitting fuel. Fuel switching is limited to the use of natural gas, liquid petroleum gas (LPG), or distillate oil.

Case-by-Case RACT Requirements

Regulation No. 12, Section 3.8 covers all other major sources of NO_X (i.e., those not subject to Sections 3.2, 3.3, 3.4, 3.5, or 3.6). These sources are to notify DNREC of their subject status, submit a proposal as what constitutes RACT, including technical and economic support documentation, and provide a schedule acceptable to DNREC for implementing RACT. The schedule for implementation of RACT must be by no later than May 31, 1995, and must include interim dates for the issuance of purchase orders, start and completion of modifications, and completion of compliance testing. The notification to DNREC, submittal of a RACT proposal and schedule must be made no later than November 15, 1993. DNREC will issue permits to these sources imposing RACT. Section 5 of Regulation No. 12 entitled, Alternative and Equivalent RACT Determination, also applies to these sources covered by Section 3.8. It specifies that DNREC will submit the RACT determinations made for such sources to EPA for approval as SIP revisions.

Exempted Sources

Under Section 4 of Regulation No. 12, the following source types and sizes are exempt from RACT requirements:

(1) Any fuel burning equipment used exclusively for providing residential comfort and hot water.

(2) Any incinerator or thermal/catalytic oxidizer used exclusively for pollution control.

(3) Any fuel burning equipment with a rated heat input capacity of less than 15 MMBTU/hour.

(4) Any stationary internal combustion engine with a rated capacity of less than 450 hp.

(5) Any source operating during the time period from the month of November to the end of March and operating with a capacity factor of 5% or less from April 1 to October 31.

(6) Any fuel burning equipment, gas turbine, or internal combustion engine with an annual capacity factor of less than 5%.

Alternative and Equivalent RACT Requirements

Section 5 of Regulation No. 12 is entitled Alternative and Equivalent RACT Determinations. It requires that any RACT determinations made under Section 3.8, and any other alternative or equivalent RACT measures (emission limits or technology requirements) determined under Sections 3.2, 3.3, 3.4, or 3.5, must be submitted by DNREC to EPA and approved as a SIP revisions. Section 5 also includes a specific provision to allow an owner or operator with more than one installation subject to Regulation No. 12 to use an alternative method of achieving an overall source-wide NO_X emission reduction that is equivalent to the NO_X emission reduction which would be achieved if each individual unit complied with the RACT standards in Section 3.

Compliance Certification, Record Keeping and Reporting Requirements

Section 7 specifies the compliance certification, record keeping and reporting requirements for NO_X sources subject to Regulation No. 12. Section 7.4 requires that applicable CEMS and associated data collection meet 40 CFR, Part 60, Appendix F. It also requires that source stack testing be conducted in accordance with test methods approved by DNREC and EPA.

III. EPA's Evaluation of Regulation No. 12 Imposing RACT for Major Sources of NO_X

EPA is proposing to approve the emission and control technology standards required by Delaware Regulation No. 12 as RACT for fuel burning sources. In the November 26, 1993 limited/limited disapproval of Regulation No. 12, EPA specifically disapproved the exemptions listed at Section 4. Since proposing limited approval/limited disapproval of Regulation No. 12, EPA has reevaluated its position since control requirements at very small units, such as those exempted by Section 4, are generally not reasonable considering technological and economic feasibility. A fuller explanation of this decision is given in the TSD for this proposed rulemaking. In light of this reevaluation, EPA no longer has the basis to propose disapproval of Regulation No. 12 based on the Section 4 exemptions.

However, Regulation No. 12 does not include specific emission limitations or control technology requirements as RACT for other major sources of NO_X in Delaware. Rather, Regulation No. 12 contains procedures for RACT to be imposed on non-fuel burning sources on a case-by-case basis as alternative RACT determinations from the specific RACT requirements for fuel burning sources. These sources are not subject to specific, ''up-front'' (i.e. immediately ascertainable) emission limitations. Instead, the regulations establish a process for the State to review and approve individual RACT emission

limitations proposed by the sources, which are then to be submitted to EPA as SIP revisions.

The CAA requires states to implement RACT on all major stationary sources. Process-oriented generic regulations, such as this, which do not include specific and ascertainable emission limitations for all major sources, do not by themselves provide standards for EPA to approve or disapprove as satisfying the definition of RACT. Therefore, the CAA's RACT requirements are satisfied only after the specific limitations imposed by the State on its major sources has been submitted to EPA as SIP revisions and approved by EPA as RACT for the subject sources.

In a November 7, 1996 policy memo from Sally Shaver, Director, Air Quality Strategies and Standards Division of OAQPS, EPA issued a guidance for approving state generic RACT regulations, like Delaware's, provided certain criteria are met. This guidance does not exempt any major source from RACT requirements but instead provides a de minimis deferral of RACT only for the purposes of approving the state's generic RACT regulation. The de minimis deferral level is determined by using the 1990 NO_X emissions, excluding the utility boiler NO_X emissions. The remaining 1990 non-utility boiler emissions are then compared with the amount of non-utility NO_X emissions that have yet to have RACT approved into the SIP. Generally, EPA expects that all utility boiler RACTs will be approved prior to application of this de minimis deferral policy and possible conversion of the generic RACT conditional approval to full approval. EPA does not expect to defer more than 5% of the emissions calculated in this manner in order to fully approve Delaware's generic NO_X RACT regulation. In accordance with the November 1996 policy, EPA is requiring that all utility boiler RACT determinations be approved into the SIP before the limited approval can be converted to full approval. Full approval of a generic RACT regulation under this policy does not change the State's statutory obligation to implement RACT for all major sources. No major NO_X source is being exempted from RACT requirements through this policy or today's rulemaking.

Because EPA has not received SIP revisions of source-specific RACT determinations for all major sources of NO_X subject to RACT under the CAA, EPA can at best, according to the November 7, 1996 policy memorandum, propose conditional limited approval of the NO_X generic rule. In support of this proposed rulemaking, the State committed in a letter dated August 18, 1998 to submit, as SIP revisions, the case-by-case RACT determinations made under Section 5 of Regulation No. 12 within 12 months of EPA's final conditional approval of the generic rule. For this reason, EPA is proposing conditional limited approval of Regulation No. 12 as explained below.

Conditional Approval

EPA is proposing conditional limited approval of Delaware's NO_X RACT regulation. The proposed conditional approval is based upon DNREC's commitment to submit all the source-specific RACT determinations made under Section 5 of Regulation No. 12 as SIP revisions by a date certain that is no later than 12 months after the effective date of EPA's final conditional approval of Regulation No. 12. Therefore, to fulfill the condition of this approval, DNREC must, by no later than 12 months after the effective date of EPA's final conditional approval of this NO_X RACT regulation, certify that it has submitted all required case-by-case RACT determinations for all currently known subject sources. Once EPA has determined that Delaware has satisfied this condition, EPA shall remove the conditional nature of its approval and Regulation No. 12 will at that time retain limited approval status. Should Delaware fail to meet the condition as specified above, the final conditional limited approval of the Delaware Regulation No. 12 shall convert to a disapproval.

Limited Approval

EPA is also proposing limited approval of Regulation No. 12 on the basis that it strengthens the Delaware SIP. Once EPA has approved all of the case-by-case RACT determinations submitted by DNREC in fulfillment of the conditional approval described above, the limited approval will convert to a full approval.

EPA is soliciting public comments on the issues discussed in this notice. These comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional office listed in the **ADDRESSES** section of this document.

Proposed Action

EPA is proposing conditional limited approval of Delaware Regulation No. 12 imposing RACT on major sources of NO_X , submitted on January 11, 1993 and January 20, 1994. EPA is proposing conditional limited approval of this SIP revision based upon the commitment made by DNREC to submit of all the case-by-case RACT determinations made under Section 5 of Regulation No. 12 for all subject within one year of the effective date of the final conditional limited approval of Regulation No. 12. Within one year of the effective date of the final conditional limited approval of Regulation No. 12, DNREC must provide a written statement certifying to EPA that to the best of its knowledge, it has submitted all of the SIP revisions described above.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under 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 EPA complies by consulting, E.O. 12875 requires EPA to 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 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

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997),

applies to any rule that EPA determines (1) is ''economically significant,'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has 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 proposed rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health and safest risk that would have a disproportionate effect on children.

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 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 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 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 proposed rule will not have a significant impact on substantial number of small entities because SIP approvals under section 110 and 301, 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 impose any new requirements, I certify that this action will not have a significant 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 a 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). If conditional approval is converted to disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement. Therefore, EPA certifies that this proposed disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

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 proposed 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 to propose conditional limited approval of Delaware Regulation No. 12 for NO_X RACT proposes to approve 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 11, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–6899 Filed 3–19–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–152; RM–9338]

Radio Broadcasting Services; Avon, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: The Commission denies the request of Avon Broadcasting Company to allot Channel 294A to Avon, NC, as its first local aural service, finding that, based on the information provided, it is not a ''community'' for allotment purposes. *See* 63 FR 45213, August 25, 1998. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–152, adopted March 3, 1999, and released March 12, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–6872 Filed 3–19–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–74; RM–9367]

Radio Broadcasting Services; Bay Springs and Ellisville, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Blakeney Communications, Inc., licensee of Station WZKW(FM), Channel 232C2, Bay Springs, Mississippi, requesting the reallotment of Channel 232C2 to Ellisville, Mississippi, as that community's first locally competitive aural transmission service, and modification of its authorization accordingly. Coordinates used for Channel 232C2 at Ellisville, Mississippi, are 31–33–25 NL and 89–28–42 WL.

DATES: Comments must be filed on or before May 3, 1999, and reply comments on or before May 18, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Frank R. Jazzo, and Anne Goodwin Crump, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, Eleventh Floor, Arlington, VA 22209.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–74, adopted March 3, 1999, and released March 12, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–6873 Filed 3–19–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 591

RIN 2127–AH45

[Docket No. 99–NHTSA–5240]

Importation of Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend NHTSA's importation regulations to implement a recent statutory amendment that adds ''show or display'' to the special limited purposes for which vehicles or equipment items may be imported without having to comply with the Federal motor vehicle safety standards (FMVSS). Under the amendments we are proposing, a person who wants to import a vehicle or equipment item for ''show or display'' would have to persuade us that the vehicle or equipment item is of such historical or technological significance that it is worthy of being shown or displayed in this country even though it would be difficult or impossible to be brought into compliance with the FMVSS. We intend this provision to accommodate primarily individuals wishing to import an example of a make or model of a vehicle which its manufacturer never sold in the United States and which therefore has no counterpart that was certified to conform to the FMVSS.

We propose to allow limited use on the public roads of vehicles imported for ''show or display.'' Before entry, an importer would describe the intended on-road use of the vehicle and affirm that the vehicle would not be used on the public roads more than 500 miles in any 12-month period. The importer would be required to provide an annual mileage statement to the agency during the first five years after entry.

Pursuant to the recent statutory amendment, we are also allowing owners of vehicles already imported into the United States under other exemptions to apply to us for a change in the terms and conditions under which we permitted their vehicles to be imported. The opportunity to apply for such a change is statutorily limited to the period of 6 months after the effective date of the final rule.

DATES: *Comment due date:* Comments are due on the proposed rule May 6, 1999. *Effective date:* The final rule would be effective 45 days after its publication in the **Federal Register**.

ADDRESSES: Comments should refer to the docket number indicated above and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.)

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202–366–5263).

SUPPLEMENTARY INFORMATION:

1. Background of this Rulemaking Action

A. The 1968 Importation Regulation

Under § 12.80(b)(1)(vii) of the agency's original importation regulation, 19 CFR 12.80, effective January 10, 1968, a person could import motor vehicles or motor vehicle equipment not manufactured to conform to the Federal motor vehicle safety standards (FMVSS) if the person declared that:

> The importer or consignee is importing such vehicle or equipment item solely for the purpose of show, test, experiment, competition, repairs, or alterations and that such vehicle or equipment item will not be sold or licensed for use on the public roads.

This regulation allowed importations of nonconforming vehicles or equipment items for ''show'' until it was superseded on January 31, 1990.

B. The 1990 Importation Regulation

On October 31, 1988, the Imported Vehicle Safety Compliance Act of 1988 (Pub. L. 100–562)(''Safety Compliance

Act'') was enacted. Its provisions became effective January 31, 1990. The Safety Compliance Act provided that nonconforming vehicles at least 25 years old could be imported without having to bring them into conformance with the Federal motor vehicle safety standards. Nonconforming vehicles less than 25 years old could also be imported without the need to conform them ''upon such terms and conditions as (NHTSA) may find necessary solely for the purpose of research, investigations, studies, demonstrations or training, or competitive racing events.''

The Safety Compliance Act made no mention of several purposes that had been specified in 19 CFR 12.80(b)(2)(vii), i.e., ''show,'' ''repairs,'' and ''alterations.'' This omission ended the ability of persons to import nonconforming vehicles specifically for show purposes. In our proposal to implement the Safety Compliance Act (the final rule was published on September 28, 1989 (54 FR 40069)), we sought to minimize the effect of the omission by noting that:

> Manufacturers who have imported nonconforming products for display at auto shows to gauge public reaction to new styling or engineering features will not be precluded from declaring that such importation is for ''research'' or ''demonstrations.'' And museums will be able to bring in nonconforming vehicles under the 25-year exception.
>
> (54 FR 17772 at 17776, April 25, 1989)

C. The 1993 Importation Regulation

Noting a growing desire to import vehicles less than 25 years old for show purposes, we proposed in 1992 to allow limited further relief. In our proposal published on January 17, 1992 (57 FR 2071, at 2072), we noted that we had

> adopted and maintained a conservative attitude towards entities other than original vehicle * * * manufacturers who wish to import nonconforming vehicles for display. In short, under the 1988 Amendments, it has refused to allow them.

As a means of affording partial relief for museums, we tentatively decided that we could interpret the word ''studies'' in the Safety Compliance Act to allow a static display

> of a vehicle * * * (where display) could form a basis for the acquisition of knowledge if that vehicle or equipment item were of historical or technological significance. Therefore, the agency has tentatively concluded that it may be in the public interest to admit vehicles whose age is less than 25 years if their importation can be demonstrated to enhance the acquisition and application of knowledge, that is to say, they merit admission because they are of historical or technological interest.
>
> (Ibid.)

We believed that this purpose could be best achieved by allowing entities, such as museums, that are recognized as tax-exempt entities under 26 U.S.C. 501(c)(3) or 509 by the Internal Revenue Service to import nonconforming vehicles for ''study.'' We did not include individuals in this proposal.

We amended part 591 on March 8, 1993, to allow tax-exempt entities to import nonconforming vehicles or equipment less than 25 years old upon demonstrating to us that the vehicles or equipment items were of historical or technological significance (58 FR 12905). Consistent with prior regulatory provisions, the amendment prohibited on-road use of these vehicles.

D. The 1994 Recodification of the Importation Authority

On July 5, 1994, the Safety Act and the Safety Compliance Act were repealed and reenacted without substantive change as 49 U.S.C. Chapter 301—*Motor Vehicle Safety*. The importation exemption provisions of 15 U.S.C. 1397(j) were recodified as 49 U.S.C. 30114 ''*Special Exemptions.*'' Sec. 30114 was slightly reworded to permit importation of nonconforming vehicles or equipment items imported for ''research, investigations, demonstrations, training, or competitive racing events.'' The word ''studies'' was omitted as being included in ''research.'' See H.R. Rep. 103–180, 103rd Cong., 1st Sess., at 59. Because the recodification statute indicated that it should not be construed as making any substantive changes, we did not amend part 591 to reflect the omission and have continued to authorize importations of noncompliant vehicles for ''studies.''

E. The 1998 Amendment

Section 7107(a) of Pub. L. 105–178, which was enacted on June 9, 1998, amended section 30114 by adding ''show, or display'' to the special purposes set forth in that section. As the Conference Report on the Transportation Equity Act for the 21st Century explained:

> Section 7107 reinstates NHTSA's authority to exempt certain motor vehicles imported for the purpose of show or display from certain applicable motor vehicle safety standards. Such authority was unintentionally deleted when title 49, United States Code was recodified in 1988.
>
> (H. Report 105–550, p. 523)

(We note that the deletion of ''show'' resulted from the 1988 amendments to the importation authority, rather than from the 1994 recodification, which deleted ''studies'').

2. Amendments Proposed to 49 CFR Part 591 that would Implement Congress' Amendment of Section 30114

A. Section 591.5, Declarations required for importation

> As amended, Section 30114 now reads: The Secretary of Transportation may exempt a motor vehicle or item of motor vehicle equipment from section 30112(a) of this title on terms the Secretary decides are necessary for research, investigations, demonstrations, training, competitive racing events, show or display.

Currently, 49 CFR 591.5(j)(1) implements 49 U.S.C. 30114 by specifying requirements for importation of nonconforming vehicles or equipment for purposes of research, investigations, studies, demonstrations or training, and competitive racing events. In view of the intent of Congress at the time of recodification to include the word ''studies'' in the word ''research,'' as previously discussed, we would revise § 591.5(j)(1)(iii) to substitute the term ''show or display'' for ''studies.'' We deem the term ''studies'' covered by the word ''research'' and subject to the same terms and conditions imposed on vehicles imported for purposes of ''research.''

B. Section 591.6, Documents accompanying declarations

We recognize two types of importers under § 591.5(j): One that has received written permission from us to import a vehicle under its provisions (§ 591.5(j)(2)(i)); and one that is an original manufacturer of motor vehicles (or its wholly-owned subsidiary) and that certifies that its products comply with the Federal motor vehicle safety standards (§ 591.5(j)(2)(ii)).

Section 591.6(f) specifies the procedure for an importer who wishes to obtain written permission from us to import a vehicle or equipment item under § 591.5(j)(2)(i). Section 591.6(f)(1) requires all such requests to contain information sufficient to identify the vehicle or equipment and the specific purpose of importation, which must include a discussion of the use to be made of the vehicle or equipment. With respect to any such vehicle to be imported for research, investigations, demonstrations or training (but not for studies), if use on the public roads is to be an integral part of the purpose of importation, the statement must request permission for use on the public roads, describing the purpose that makes such use necessary and stating the estimated period of time during which use of the public roads is necessary. The request must also state the intended means of

final disposition (and disposition date) of the vehicle or equipment after completion of the purpose for which it is imported.

After review, we have decided that it is appropriate to retain this requirement in implementing the new statutory provision but we would amend § 591.6(f)(1) to clarify that it pertains to importations other than those for show or display, which would now be covered by § 591.6(f)(2).

Currently, if a § 591.5(j)(2)(i) importer wishes to import a vehicle or equipment for ''studies,'' the importer's written request:

> shall explain why the vehicle or equipment item is of historical or technological interest, and describe the studies for which importation is sought. The importer, if other than the National Museum of History and Technology, Smithsonian Institution, shall also provide a copy of the Determination Letter from the Internal Revenue Service approving the importer's status as a tax-exempt corporation or foundation under section 501(c)(3) or section 509, respectively, of the Internal Revenue Code. The time between the date of the Letter and the date of the importer's written request to the Administrator shall be not less than 5 years. The importer shall also provide a statement that it shall not sell, or transfer possession of, or title to, the vehicle, or license it for use, or operate it on the public roads, until the vehicle is not less than 25 years old.

We have concluded that the statutory amendment providing authority to admit vehicles or equipment for show or display, without any qualification on the eligibility of the importer, means that tax-exempt entities as well as individual importers may import vehicles for show or display. For this reason, there appears to be no further need to maintain an exemption for studies. Accordingly, we would amend the regulation to delete the provisions expressly relating to importations for studies. As noted, importations for ''studies'' are essentially those of importations for ''research.''

One of the terms and conditions of the allowance of importation for ''studies'' was that the vehicle not be licensed for use or operated on the public roads. We have reviewed this restriction in view of our new authority to allow importation for ''show or display,'' and have tentatively concluded that limited on-road use should be allowed, pursuant to our permission. We believe that the historical and technological significance of a vehicle may be maintained by its limited use of the public roads on an occasional basis in order to ensure that its engine, braking, lighting, and other dynamic systems remain in good working order, in short, so that it may be preserved. Another appropriate use of such a vehicle on the public roads would be to allow it to travel to and from nearby displays of automobiles of similar significance, so that its significance could be appreciated by a greater number of people than were it restricted to off-road use. We have tentatively decided that on-road use of these nonconforming vehicles should be limited to a maximum of 500 miles per year. There is no limit, of course, on the distance that such vehicles may be trailered in order to show or display them.

Consistent with the previous exemption for ''studies,'' we have decided that a person who wishes to import a vehicle for show or display ought to establish that the vehicle is one of historical or technological interest. This criterion has existed for many years, beginning with the previous ''show'' exemption, and continuing with the one for ''studies.''

Our most detailed discussion of the criterion of historical and technical interest was contained in a letter of July 12, 1983, to Richard London. Mr. London asked about the acceptability of importing a Mercedes-Benz 280SL which would be trailered to various auto meets, and which would not be licensed for use or used on the public roads. We advised Mr. Gordon that:

> The agency considers several factors in determining whether to accept a declaration that a vehicle is imported solely for ''show.'' One of these is the nature of the vehicle itself. If it is a unique machine generally considered to be of technological or historical significance, it is more likely to be admitted under the exception than if it were a mass-produced vehicle similar to many that were manufactured to conform to the Federal motor vehicle safety standards. The smaller the production run, the greater the likelihood that it will be considered to be unique. Mechanical components that differ substantially from those commonly in use at the time of manufacturer are evidence of its technological significance. Association with historical personages that would create a desire in the public to see the car is also considered relevant in the agency's interpretation of the word ''show.''

Examples of vehicles that might qualify under this exemption are high technology vehicles such as the McLaren F1, or certain types of Porsches or Ferraris that were never, in the first instance, sold in the United States. We might consider a vehicle owned by the Pope or the Queen of England to be a vehicle of historical significance.

We went on to explain to Mr. London that:

> In interpreting the word ''show'' and thereby exercising its discretion whether to allow importation of nonconforming motor vehicles for this purpose, the agency must balance the harm to the public likely to occur through use of the vehicle on the public roads, with the benefit to the public of importation of nonconforming vehicle for show purposes. * * * [t]he agency believes it is less likely that a rare or unique vehicle, part of a collection available to the public will be sold for use on the public roads than a vehicle such as the 1968–72 Mercedes 280SL that has been imported in numerous quantities as a conforming motor vehicle.

This explanation clearly demonstrated our view that nonconforming analogues of certified vehicles sold in the United States were not very likely to be considered of historical or technological significance.

In any event, use on the public roads will not be a matter of right for vehicles imported for ''show or display,'' but subject to such terms and conditions as may be established at the time of entry. In some cases where there are safety concerns, we may refuse to authorize on-road use of a particular vehicle. In order to ensure that any on-road use is limited, we are proposing that the prospective importer, in his or her request letter, describe the purposes for which on-road use is deemed required together with an affirmation that the vehicle will not be driven on the public roads more than 500 miles in any 12-month period beginning as of the date of its importation. The affirmation would be confirmed by the importer's submittal of an annual notarized mileage statement for the vehicle on the anniversary date of its importation, for the first five years after it is imported. In addition, the prospective importer would have to state in his or her letter of request that the vehicle would not be used on the public roads unless it met the requirements of the Environmental Protection Agency.

The current regulation also restricts sale and transfer of possession of a vehicle imported for ''studies'' until it is 25 years old. While this restriction might not be burdensome to a museum, the agency recognizes that there are circumstances such as the death of an importer where a sale or transfer of a vehicle imported for ''show or display'' must occur before it is 25 years old. To fully implement its new authority to allow importation for ''show or display,'' the agency proposes to modify this restriction, and allow sale or transfer of a vehicle imported for ''show or display'' upon approval by the Administrator.

Accordingly, we propose to revise § 591.6(f)(2) to require that a prospective importer:

> shall explain why the vehicle or equipment item is of historical or technological interest. The importer shall also provide a statement that, until the vehicle is not less than 25

years old, (s)he shall not sell, or transfer possession of, or title to, the vehicle, and shall not license it for use, or operate it on the public roads, except under such terms and conditions as the Administrator may authorize. If the importer wishes to operate the vehicle on the public roads, the request to the Administrator shall include a description of the purposes for which (s)he wishes to use it on the public roads, an affirmation that the vehicle will not be operated on the public roads for more than 500 miles in any 12-month period, and a statement that the vehicle will not be used on the public roads unless it is in compliance with the regulations of the Environmental Protection Agency. Finally, the request shall also include a statement that the importer will provide annually a notarized statement to the Administrator that states the mileage of the vehicle on the first through fifth anniversary dates of the importation of the vehicle, which shall be provided not later than 10 days after each such anniversary date. The request shall be sent to the Director, Office of Vehicle Safety Compliance (NSA–32), National Highway Traffic Safety Administration, Room 6111, 400 Seventh Street, SW., Washington, DC 20590).

Failure to file a mileage statement will be regarded as a violation of the terms of entry, for which a civil penalty may be imposed.

C. Section 591.7, Restrictions on importations

Until now, all importations under § 591.5(j)(1) have been ''for a temporary period,'' requiring a U.S. Customs Service Temporary Importation Bond (TIB). Under § 591.7(a), the TIB requires that vehicles which it covers shall not remain in the United States for a period that exceeds 3 years from the date of entry. However, under § 591.7(b), if the importer decides to liquidate the bond, it may apply to us for permission to keep the vehicle in the country for an additional period of time not to exceed 5 years from the date of entry, unless further written permission has been obtained from us. Such written permission, after 5 years, can result in an ''importation for a temporary period'' becoming a permanent one. This regulatory scheme has caused uncertainty as to whether we permit permanent importations under § 591.5(j).

Because we do permit permanent importations under § 591.5(j), we believe that we should clarify this point and simplify this process to allow a permanent importation ab initio, if an importer chooses to pay duty upon entry of the vehicle, rather than treating the entry as a ''temporary'' one, requiring a TIB and subsequent letters of permission. Amendments of this nature would not affect the existing right under § 591.5(j)(1) to import vehicles on a temporary basis with a TIB for those importers who wish to choose this option.

Another restriction is imposed by § 591.7(c). If the importer has brought a vehicle into the United States pursuant to § 591.5(j)(2)(i), § 591.7(c) requires the importer to retain title to and possession of it, forbids its leasing, and allows its use on the public roads only if written permission has been granted by the Administrator pursuant to § 591.6(f)(1) (covering importations for research, investigations, demonstrations or training but not studies or competitive racing events).

The restriction of § 591.7(c) implements the statement that an importer is required to make as part of the request letter. Given the fact that limited on-road use is being permitted for importations for ''show or display,'' we propose to amend § 591.7(c) to allow limited on-road use of all vehicles imported under § 591.5(j)(2)(i) ''under such terms and conditions as the Administrator may authorize in writing.'' We would also amend the first sentence of § 591.7(c) to conform to the statement that an importer gives under § 591.6(f)(2), and imposing affirmative obligations not to sell or transfer the vehicle, or license it or operate it on the public roads except upon written approval by the Administrator in place of the presently existing absolute prohibition.

Section 591.7(d) specifically provides that any violation of a term or condition that we impose ''in a letter authorizing importation or on-road use under § 591.5(j) shall be considered a violation'' of the Safety Act for which a civil penalty may be imposed. Retention of this requirement is needed for enforcement purposes. However, the statutory reference in § 591.7(d) to 15 U.S.C. 1397(a)(1)(A) would be changed to 49 U.S.C. 30112(a) to reflect the recodification.

Section 591.7(e) prohibits the importation for ''studies'' by any person not recognized as a tax-exempt entity by the Internal Revenue Service for not less than 5 years before the date of its written request. Because we intend to incorporate the ''studies'' exemption into the exemption for ''research'' where this restriction does not exist, this section would be moot. Section 591.7(e), therefore, would be removed. A new subsection (e) would replace it, to implement the statutory directive of section 7107(b) of Pub. L. 105–178 discussed below.

3. Seeking Exemptions Under Section 30114 for Vehicles in the United States at the time the Amendment was Enacted.

Section 7107(b) of Pub. L. 105–178 provides that: (b) TRANSITION RULE—A person who is the owner of a motor vehicle located in the United States on the date of enactment of this Act may seek an exemption under section 30114 of title 49, United States Code, as amended by subsection (a) of this section, for a period of 6 months after the date regulations of the Secretary of Transportation promulgated in response to such amendment take effect.

We interpret section 7017(b) as authorizing owners of vehicles imported under § 591.5(j) before June 9, 1998, to apply to the Administrator for a change in the terms and conditions under which the vehicle was admitted so that engaging in an act contrary to those original terms and conditions will not be held to be a violation. If the change requested is an importation for show or display, the request shall also include a statement that the owner will provide the annual mileage statement required of de novo importers for show or display by § 591.6(j)(2). We therefore propose to revise § 591.7(d) and (e) to read as follows:

(d) Any violation of a term or condition imposed by the Administrator in a letter authorizing importation or on-road use under § 591.5(j), including the failure to provide an annual mileage statement, shall be considered a violation of 49 U.S.C. 30112(a) for which a civil penalty may be imposed. With respect to importations under § 591.6(f)(2), if the importer's annual mileage statement shows that the vehicle has been used on the public roads for more than 500 miles in any 12-month period, the Administrator may tentatively conclude that a term of entry has been violated but shall make no final conclusion until the importer has been afforded an opportunity to present data, views, and arguments as to why there is no violation or why a penalty should not be imposed.

(e) The owner of a vehicle located in the United States on June 9, 1998, which the owner had imported pursuant to § 591.5(j), may apply to the Administrator on or before [enter date that is six months after publication date of the rule] for a change in any such term or condition contained in the Administrator's letter. If the owner requests a change to importation for show or display, the request shall provide the current mileage of the vehicle and include a statement that the owner will provide annually a notarized statement to the Administrator that states the mileage of the vehicle on the first through fifth anniversary dates of the request for the change, which shall be provided not later than 10 days after such anniversary date. All requests for change shall be sent to the Director, Office of Vehicle Safety Compliance (NSA–32), National Highway Traffic Safety Administration, Room 6111, 400 Seventh Street, SW, Washington, DC 20590.

4. Effective Date

The final rule would be effective 45 days after its publication in the **Federal Register**.

5. Rulemaking Analyses and Notices

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This notice has not been reviewed under E.O. 12866. After considering the impacts of this rulemaking action, NHTSA has determined that the action is not significant within the meaning of the Department of Transportation regulatory policies and procedures. The only substantive change that this proposed rule would make is to add an additional justification for importing motor vehicles without the need to comply with the Federal motor vehicle safety standards, and to require their importers to submit substantiating information similar to that already required for similar importations (see discussion below on Paperwork Reduction Act). The impacts are so minimal as not to warrant the preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act. For the reasons discussed above under E.O. 12866 and the DOT Policies and Procedures, I certify that this action will not have a significant economic impact upon ''a substantial number of small entities.'' The addition of an option to import a vehicle for ''show or display'' without the need to conform it relieves a previously existing restriction. Because the agency has permitted manufacturers of motor vehicles to import vehicles for purposes similar to ''show or display'' in the past, NHTSA believes that virtually all who wish to import a vehicle for ''show or display'' will be individuals. Individuals are not ''small entities.'' Governmental jurisdictions will be affected only to the extent that they must decide whether local laws permit the operation on local public roads of motor vehicles imported for show or display that do not conform to all applicable Federal motor vehicle safety standards, and this decision would not have a significant economic impact.

C. Executive Order 12612 (Federalism)

The agency has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 ''Federalism'' and determined that the action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported will not vary significantly from that existing before the promulgation of this rule.

E. Civil Justice Reform

This final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. A procedure is set forth in 49 U.S.C. 30161 for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

The procedures in this rule to permit importation of motor vehicles and equipment not originally manufactured for the U.S. market include information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The original information collection requirements of part 591 were approved by the OMB pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). NHTSA believes that the existing clearance covers a final rule that would be based on implementing a statutory amendment, and has not sought a new or expanded clearance. This collection of information has been assigned OMB Control No. 2127–0002 (''Motor Vehicle Information'').

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this final rule will not have an effect of $100 million, no Unfunded Mandates assessment has been prepared.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 591

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 591 would be amended as follows:

PART 591—IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO FEDERAL SAFETY, BUMPER, AND THEFT PREVENTION STANDARDS

1. The authority citation for part 591 would be revised to read as follows:

Authority: Pub. L. 100–562, Pub. L. 105–178, 49 U.S.C. 322(a), 30117; delegations of authority at 49 CFR 1.50 and 501.8.

2. Section 591.5 would be amended by paragraph (j)(1) to read as follows:

§ 591.5 Declarations required for importation.

* * * * *

(j)(1) The vehicle or equipment item does not conform with all applicable Federal motor vehicle safety and bumper standards, but is being imported solely for the purpose of:

(i) research;

(ii) investigations;

(iii) show or display;

(iv) demonstrations or training; or

(v) competitive racing events;

* * * * *

3. Section 591.6(f)(1) and (2) would be revised to read as follows:

§ 591.6 Documents accompanying declarations.

* * * * *

(f) * * *

(1) A declaration made pursuant to § 591.5(j)(1)(i), (ii), or (iv) and § 591.5(j)(2)(i) shall be accompanied by a letter from the Administrator authorizing importation pursuant to these sections. Any person seeking to import a motor vehicle or motor vehicle equipment pursuant to these sections shall submit, in advance of such importation, a written request to the Administrator containing a full and complete statement identifying the vehicle or equipment, its make, model, model year or date of manufacture, VIN if a motor vehicle, and the specific purpose(s) of importation. The discussion of purpose(s) shall include a description of the use to be made of the vehicle or equipment. If use on the public roads is an integral part of the purpose for which the vehicle or equipment is imported, the statement shall request permission for use on the public roads, describing the purpose which makes such use necessary, and stating the estimated period of time during which use of the vehicle or equipment on the public roads is necessary. The request shall also state the intended means of final disposition, and disposition date, of the vehicle or equipment after completion of the purposes for which it is imported. The request shall be addressed to Director, Office of Vehicle Safety Compliance (NSA–32), National Highway Traffic Safety Administration, Room 6111, 400 Seventh Street, SW, Washington, DC 20590.

(2) A declaration made pursuant to §§ 591.5(j)(1)(iii) and 591.5(j)(2)(i) shall be accompanied by a letter from the Administrator authorizing importation pursuant to these sections. Any person seeking to import a motor vehicle pursuant to those sections shall submit, in advance of such importation, a written request to the Administrator containing a full and complete statement identifying the vehicle, its make, model, model year or date of manufacture, and VIN. The importer's written request to the Administrator shall explain why the vehicle or equipment item is of historical or technological interest. The importer shall also provide a statement that, until the vehicle is not less than 25 years old, (s)he shall not sell, or transfer possession of, or title to, the vehicle, and shall not license it for use, or operate it on the public roads, except under such terms and conditions as the Administrator may authorize. If the importer wishes to operate the vehicle on the public roads, the request to the Administrator shall include a description of the purposes for which (s)he wishes to use it on the public roads, an affirmation that the vehicle will not be operated on the public roads more than 500 miles in any 12-month period, and a statement that the vehicle will not be used on the public roads unless it is in compliance with the regulations of the Environmental Protection Agency. Finally, the request shall also include a statement that the importer will provide annually a notarized statement to the Administrator that states the mileage of the vehicle on the first through fifth anniversary dates of the importation of the vehicle, which shall be provided not later than 10 days after each such anniversary date. The request shall be sent to the Director, Office of Vehicle Safety Compliance (NSA–32), National Highway Traffic Safety Administration, Room 6111, 400 Seventh Street, SW, Washington, DC 20590.

4. Section 591.7 would be amended by revising the first sentence of paragraph (c) and by revising paragraphs (d) and (e) to read as follows:

§ 591.7 Restrictions on importation

* * * * *

(c) An importer of a vehicle which has entered the United States under a declaration made pursuant to § 591.5(j)(2)(i) shall not sell, or transfer possession of, or title to, the vehicle, and shall not license it for use, or operate it on the public roads, except under such terms and conditions as the Administrator may authorize in writing.

* * *

(d) Any violation of a term or condition imposed by the Administrator in a letter authorizing importation or on-road use under § 591.5(j), including the failure to provide an annual mileage statement, shall be considered a violation of 49 U.S.C. 30112(a) for which a civil penalty may be imposed. With respect to importations under Sec. 591.6(f)(2), if the importer's annual mileage statement shows that the vehicle has been used on the public roads for more than 500 miles in any 12-month period, the Administrator may tentatively conclude that a term of entry has been violated but shall make no final conclusion until the importer has been afforded an opportunity to present data, views, and arguments as to why there is no violation or why a penalty should not be imposed.

(e) The owner of a vehicle located in the United States on June 9, 1998, which the owner had imported pursuant to § 591.5(j), may apply to the Administrator on or before [enter date that is six months after publication date of the rule] for a change in any such term or condition contained in the Administrator's letter. If the owner requests a change to importation for show or display, the request shall provide the current mileage of the vehicle and include a statement that the owner will provide annually a notarized statement to the Administrator that states the mileage of the vehicle on the first through fifth anniversary dates of the request for the change, which shall be provided not later than 10 days after such anniversary date. All requests for change shall be sent to the Director, Office of Vehicle Safety Compliance (NSA–32), National Highway Traffic Safety Administration, Room 6111, 400 Seventh Street, SW, Washington, DC 20590.

Issued on: March 16, 1999.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 99–6847 Filed 3–19–99; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 64, No. 54
Monday, March 22, 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.

AFRICAN DEVELOPMENT FOUNDATION

Sunshine Act Meeting; Board of Directors

TIME: 1:00–5:00 p.m.

PLACE: ADF Headquarters.

DATE: Wednesday, 24 March 1999.

STATUS: Open.

Agenda

1:00 p.m.
Chairman's Report
1:30 p.m.
President's Report
New Business
5:00 p.m.
Adjournment

If you have any questions or comments, please direct them to Dick Day, Coordinator, Office of Policy, Planning and Outreach, who can be reached at (202) 673–3916.

William R. Ford,

President.

[FR Doc. 99–7019 Filed 3–18–99; 10:55 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Baseline and Trend Information on Wilderness Use and Users

AGENCY: Forest Service, USDA.

ACTION: Extension of an information collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to request extension of a currently approved information collection. This information collection has been used to collect data about wilderness recreation users in the United States, since 1990. The information is necessary to help the Forest Service and other Federal wilderness management agencies meet the needs and expectations of visitors, who look to the National Wilderness Preservation System for recreational experiences that are dependent upon natural wilderness conditions away from human development and devoid of crowds. Respondents will be visitors, or potential visitors, to the National Wilderness Preservation System.

DATES: Comments must be received in writing on or before May 21, 1999.

ADDRESSES: All comments should be addressed to Alan Watson, Aldo Leopold Wilderness Research Institute, Forest Service, USDA, P.O. Box 8089, Missoula, Montana 59807 or email awatson/rmrs__missoula@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Alan Watson, Aldo Leopold Wilderness Research Institute, (406) 542–4197.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

The following describes the information collection to be extended:

Title: Baseline and Trend Information on Wilderness Use and Users.

OMB Number: 0596–0108.

Expiration Date of Approval: May 31, 1999.

Type of Request: Extension of a currently approved information collection.

Abstract: The Wilderness Act of 1964 directs that the National Wilderness Preservation System (System) be managed to protect natural wilderness conditions and to provide outstanding opportunities for the public to find solitude or primitive and unconfined types of recreational experiences.

To meet the requirements of The Wilderness Act of 1964 and to help the Forest Service enhance visitors' recreational experiences, the agency monitors trends of visitor recreational activities. Forest Service personnel also want to ensure that visitors' recreational activities do not harm the natural resources of the National Wilderness Preservation System. The agency is expanding the scope of the survey to include wilderness areas about which the agency has little information in regard to visitor recreational trends. Data from this information collection will be maintained at the interagency (Agriculture and Interior) Aldo Leopold Wilderness Research Institute in Missoula, Montana.

The Forest Service will use information from this collection: (1) to establish visitor recreational use baselines; (2) to monitor visitor recreational use trends; (3) to gain an understanding of how the agency's management of the National Wilderness Preservation System influences a visitor's wilderness experience; and (4) to help understand how to educate visitors, so they may enjoy their wilderness experience without leaving permanent reminders of their visits, such as damaged vegetation, litter, and polluted streams. The information also will be used for planning management direction for various wilderness areas managed by the agencies in the Departments of Agriculture and Interior.

Respondents will be visitors, or potential visitors, to the National Wilderness Preservation System. Forest Service personnel will conduct face-to-face, on-site interviews with visitors as they enter the System or will send mailback survey forms to visitors at their homes, using addresses that visitors provide when visiting the System. Forest Service personnel will contact visitors at nonwilderness sites to ask if they have plans to visit the System. When unable to conduct face-to-face interviews with potential visitors, the agency will send mailback survey forms to the homes of those who visited nonwilderness areas, using addresses provided by them as they entered the nonwilderness sites. In some cases, the agency forms will be made available on a self-service basis to visitors in trailhead displays.

Respondents will be asked questions that include how many times they visit, when they plan their next visit, or if they plan to visit at all. Respondents will be asked, when visiting, if they come in groups, and, if so, the size of those groups. Respondents will be asked how long they stay when visiting? Do they use equipment, such as stoves, or use wood for fires while visiting, and do they have preferences for social conditions? For example, do they like or will they accept crowded conditions, such as crowded camping areas, designed to limit negative effects to the natural resources, such as soil compaction, damage to tree roots, and negative impacts to water quality? Do respondents support various wilderness management strategies, such as limiting visitor use of wilderness areas to lessen negative effects to the wilderness environment? Do they support

separating uses, such as designating some campsites for use only by groups with pack animals, to avoid conflict? Data collected in this information collection is not available from other sources.

Estimate of Burden: 15 minutes.

Type of Respondents: Visitors or potential visitors to the National Wilderness Preservation System.

Estimated Number of Respondents: 3000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 750 hours.

Comment Is Invited

Comments are invited on (a) Whether the proposed collection of information is necessary for the stated purposes and 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, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including name and address when provided, will be summarized and included in the request for Office of Management and Budget approval. All comments also will become a matter of public record.

Dated: March 16, 1999.

Robert Lewis, Jr.,

Deputy Chief for Research & Development.

[FR Doc. 99–6931 Filed 3–19–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Rocky Mountain Region: Colorado, Kansas, Nebraska, South Dakota, Eastern Wyoming; Legal Notice of the Opportunity to Comment on Certain Proposed Actions and of Decisions Subject to Notice and Comment

AGENCY: Forest Service, USDA.

ACTION: Notice; Newspapers for legal notices.

SUMMARY: This is a list of those newspapers that will be used to publish notice of all decisions which are subject to appeal under 36 CFR 217, notice of the opportunity to comment on certain proposed actions pursuant to 36 CFR 215.5, and notice of decisions subject to appeal under the general provisions of 36 CFR 215. As required at 36 CFR 215.5 and 215.9, such notice shall constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to public notice and comment and administrative appeal. Newspaper publications of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

EFFECTIVE DATE: Use of these newspapers for purposes of publishing the notices required under the provisions of 36 CFR 215 shall begin November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Momper, Regional Appeals and Litigation Coordinator, Rocky Mountain Region, Box 15127, Lakewood, Colorado 80225, Area Code 303–275–5161.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Rocky Mountain Region shall give notice of the opportunity to comment on certain proposed actions and of decisions subject to appeal pursuant to 36 CFR part 215 in the following newspapers which are listed by Forest Service unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. The day after the publication of the public notice in the primary newspaper shall be the first day of the appeal filing period.

Decisions by the Regional Forester

The Denver Post, published daily in Denver, Denver County, Colorado, for decisions affecting National Forest System lands in the States of Colorado, Nebraska, Kansas, and eastern Wyoming and for any decision of Region-wide impact. In addition, notice of decisions made by the Regional Forester will also be published in the *Rocky Mountain News*, published daily in Denver, Denver County, Colorado, Notice of decisions affecting National Forest System lands in the State of South Dakota will also be published in *The Rapid City Journal* published daily in Rapid City, Pennington County, South Dakota. For those decisions affecting a particular unit, the newspaper specific to that unit will be used.

Arapaho and Roosevelt National Forests, Colorado

Forest Supervisor Decisions

The Denver Post, published daily in Denver, Denver County, Colorado.

District Ranger Decisions

Redfeather and Estes-Poudre Districts: *Coloradoan*, published daily in Fort Collins, Larimer County, Colorado.

Pawnee District: *Greeley Tribute*, published daily in Greely, Weld County, Colorado.

Boulder District: *Boulder Daily Camera*, published daily in Boulder, Boulder County, Colorado.

Clear Creek District: *Clear Creek Courant*, published weekly in Idaho Springs, Clear Creek County, Colorado.

Sulphur District: *Granby Sky High News*, published daily in Granby, Grand County, Colorado.

Grand Mesa, Uncompahgre and Gunnison National Forests, Colorado

Forest Supervisor Decisions

Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

District Ranger Decisions

Collbran and Grand Junction Districts: *Grand Junction Daily Sentinel*, published daily in Grand Junction, Mesa County, Colorado.

Paonia District: *Delta County Independent* published weekly in Delta, Delta County, Colorado.

Cebolla and Taylor River Districts: *Gunnison County Times*, published weekly in Gunnison, Gunnison County, Colorado.

Norwood District: *Telluride Daily Planet*, published daily in Telluride, San Miguel County, Colorado.

Ouray District: *Montrose Daily Press*, published daily in Montrose, Montrose County, Colorado.

Pike and San Isabel National Forests

Forest Supervisor Decisions

Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

District Ranger Decisions

San Carlos District: *Pueblo Chieftain*, published daily in Pueblo, Pueblo County, Colorado.

Comanche District: *Plainsman Herald*, published weekly in Springfield, Baca County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the *La Junta Tribune Democrat*, published daily in La Junta, Otero County, Colorado, and in the *Ark Valley Journal*, published weekly in La Junta, Otero County, Colorado.

Cimarron District: Tri-State News, published weekly in Elkhart, Morton County, Kansas.

South Platte District: Daily News Press, published daily in Castle Rock, Douglas County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the *High Timber Times,* published weekly in Conifer, Jefferson County, Colorado, and in the *Fairplay Flume,* published weekly in Fairplay, Park County, Colorado.

Leadville District: Herald Democrat, published weekly in Leadville, Lake County, Colorado.

Salida District: *The Mountain Mail,* published daily in Salida, Chaffee County, Colorado.

South Park District: *Fairplay Flume,* published weekly in Fairplay, Park County, Colorado.

Pikes Peak District: *Gazette Telegraph,* published daily in Colorado Springs, El Paso County, Colorado.

Rio Grande National Forest, Colorado

Forest Supervisor Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

District Ranger Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

Routt National Forest, Colorado

Forest Supervisor Decisions

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will also be used.

District Ranger Decisions

Hahns Peak-Bears Ears District: *Steamboat Pilot,* published weekly in Steamboat Springs, Routt County Colorado is the newspaper of record for decision made by the hans peak bears ears District Ranger. Additional notice to inform local communities about decision made by the District Ranger will also be placed in the *Hayden Valley Press,* published weekly in Hayden, Routt County, Colorado and in the *Northwest Colorado Daily Press,* published daily in Craig, Moffat County, Colorado.

Yampa and District: *Steamboat Pilot,* published weekly in Steamboat Springs, Routt County, Colorado.

Middle Park District: North Park District: *Jackson County Star,* published weekly in Walden, Jackson County, Colorado.

San Juan National Forest, Colorado

Forest Supervisors Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

District Ranger Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

White River National Forest, Colorado

Forest Supervisor Decisions

The Glenwood Post, published Monday through Saturday in Glenwood Springs, Garfield County, Colorado.

District Ranger Decisions

Aspen District: *Aspen Times,* published weekly in Aspen, Pitkin County, Colorado.

Blanco District: *Meeker Herald,* published weekly in Meeker, Rio Blanco County, Colorado.

Dillon District: *Summit Daily News,* published daily in Frisco, Summit County, Colorado.

Eagle District: *Eagle Valley Enterprise,* published weekly in Eagle, Eagle County, Colorado.

Holy Cross District: *Vail Trail,* published weekly in Vail, Eagle County, Colorado.

Rifle District: *Citizen Telegram,* published weekly in Rifle, Garfield County, Colorado.

Sopris District: Valley Journal, published weekly in Carbondale, Garfield County, Colorado.

Nebraska National Forest, Nebraska

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota for decisions affecting National Forest System lands in the State of South Dakota.

The Omaha World Herald, published daily in Omaha, Douglas County, Nebraska for decisions affecting National Forest System lands in the State of Nebraska.

District Ranger Decisions

Bassey District: *The North Platte Telegraph,* published daily in North Platte, Lincoln County, Nebraska.

Pine Ridge District: *The Chadron Record,* published weekly in Chadron, Dawes County, Nebraska.

Samuel R. McKelvie National Forest: *The Valentine Midland News,* published weekly in Valentine, Cherry County, Nebraska.

Fall River and Wall Districts, Buffalo Gap National Grassland: *The Rapid City Journal,* published daily in Rapid City, Pennington County, South Dakota.

Fall River and Wall Districts: *The Rapid City Journal.* published daily in the Rapid City, Pennington County, South Dakota.

Fort Pierre National Grassland: *The Capitol Journal,* published Monday thru Friday in Pierre, Hughes County, South Dakota.

Black Hills National Forest, South Dakota and Eastern Wyoming

Forest Supervisor Decision

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

District Ranger Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Bighorn National Forest, Wyoming

Forest Supervisor Decisions

Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming.

In addition, for decisions affecting an individual district(s), the local district(s) newspaper will be used (see listing below).

District Ranger Decisions

Tongue District: *Sheridan Press,* published daily in Sheridan, Sheridan County, Wyoming.

Buffalo District: *Buffalo Bulletin,* published weekly in Buffalo, Johnson County, Wyoming.

Medicine Wheel District: *Lovell Chronicle,* published weekly in Lovell, Big Horn County, Wyoming.

Tensleep District: *Northern Wyoming Daily News,* published daily in Worland, Washakie County, Wyoming.

Painstrock District: *Greybull Standard,* published weekly in Greybull, Big Horn County, Wyoming.

Medicine Bow National Forest, Wyoming

Forest Supervisor Decisions

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

District Ranger Decisions

Laramie District: *Laramie Daily Boomerang,* published daily in Laramie, Albany County, Wyoming.

Douglas District: *Casper Star-Tribune,* published daily in Casper, Natrona County, Wyoming.

Brush Creek and Hayden Districts: *Rawlins Daily Times,* published daily in Rawlins, Carbon County, Wyoming.

Shoshone National Forest, Wyoming

Forest Supervisor Decision

Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

District Ranger Decisions

Clarks Fork District: *Powell Tribune,* published twice weekly in Powell, Park County, Wyoming.

Wapiti and Greybull Districts: *Cody Enterprise,* published twice weekly in Cody, Park County, Wyoming.

Wind River District: *The Dubois Frontier,* published weekly in Dubois, Teton County, Wyoming.

Lander District: *Wyoming State Journal,* published twice weekly in lander, Fremont County, Wyoming.

Dated: March 15, 1999.

Tom L. Thompson,

Deputy Regional Forester.

[FR Doc. 99–6864 Filed 3–19–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Prepare an Environmental Impact Statement for the Threemile Timber Harvest

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to provide timber for the Tongass National Forest timber sale program. The Record of Decision will disclose how the Forest Service has decided to provide harvest units, roads, and associated timber harvesting facilities. The proposed action is to harvest timber on approximately 2300 acres including both clearcut with reserves and overstory removal harvest methods. This would entail harvest of an estimated 48 million board feet of timber. Approximately 33 miles of new roads would be built, as well as a new log transfer facility at No Name Bay.

A range of alternatives responsive to significant issues will be developed including a no-action alternative. The proposed timber harvest is located in the Tongass National Forest, Petersburg Ranger District, on Kuiu Island, Alaska, within Value Comparison Units 416, 417, 418, 419 and the east side of VCU 420. The *Tongass Land and Resource Management Plan* (1997) provides the overall guidance (land use designations, goals, objectives, management prescriptions, standards and guidelines) to achieve the desired future condition for the area in which this project is proposed. The Forest Plan allocates portions of the project area into four management prescriptions: Timber Production, Modified Landscape, Semi-Remote Recreation, and Old-growth Habitat Land Use Designations.

DATES: For the Forest Service to best use the scoping input, comments should be received by May 1, 1999; however, scoping comments will be accepted at any time.

ADDRESSES: Please send written comments to Petersburg Ranger District; Tongass National Forest; Attn: Threemile Timber Harvest EIS; P.O. Box 1328, Petersburg, AK, 99833.

FOR FURTHER INFORMATION CONTRACT: Questions about the proposal and EIS should be directed to Everett Kissinger, Interdisciplinary Team Leader, P.O. Box 309, Petersburg, AK, 99833, phone (907) 772–3841.

SUPPLEMENTARY INFORMATION: Public participation will be part of the planning process and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments, and assistance from federal, state, and local agencies, and from individuals and organizations that may be interested in, or affected by, the proposed activities. The scoping process will include: (1) Identification of potential issues; (2) identification of issues to be analyzed in depth; and, (3) elimination of insignificant issues or those which have been covered by a previous enviromental review. Written scoping comments will be solicited through a scoping package sent to a project mailing list. For the Forest Service to best use the scoping input, comments should be received by May 1, 1999; however, scoping comments will be accepted at any time. Tentative issues identified for analysis in the EIS include subsistence, wildlife habitat, road development and access management, and timber sale economics and timber supply. Based on the results of scoping and the resource capabilities within the project area, alternatives including a no-action alternative will be developed for a Draft Environmental Impact Statement (Draft EIS). The Draft EIS is projected to be filed with the Environmental Protection Agency (EPA) in September 1999. Subsistence hearings, as provided for in Title VIII, Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), are planned during the comment period on the Draft EIS. The Final EIS is anticipated by March, 2000.

The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency publishes a notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.*v. *NRDC,* 435 U.S. 519, 553, (1978). Environmental objections that could have been raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments during scoping and comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific areas with the project areas or specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision

regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

Permits: Those required for implementation include the following:

1. U.S. Army Corps of Engineers
   —Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
   —Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899;
2. Environmental Protection Agency
   —National Pollutant Discharge Elimination System (402) Permit;
   —Review Spill Prevention Control and Countermeasure Plan;
3. State of Alaska, Department of Natural Resources
   —Tideland Permit and Lease or Easement;
4. State of Alaska, Department of Environmental Conservation
   —Solid Waste Disposal Permit;
   —Certification of Compliance with Alaska Water Quality Standards (401 Certification)
5. State of Alaska, Division of Governmental Coordination
   —Coastal Zone Consistency Determination concurrence

Responsible Official

Carol J. Jorgensen, Assistant Forest Supervisor, Tongass National Forest, P.O. Box 309, Petersburg, AK 99833, is the responsible official. The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

Dated: March 8, 1999.

Carol J. Jorgensen.

Assistant Forest Supervisor.

[FR Doc. 99–6914 Filed 3–19–99; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 21, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Impulse Merchandising Program (IMP)
Party Items
M.R. 1500—2000
Cooking Utensils
M.R. 1550
Health and Beauty Aids
M.R. 1600
Cleaning Aids
M.R. 1650
Pet Items
M.R. 1700
Baby Items
M.R. 1750
Children Items
M.R. 1800
Household Items
M.R. 1850
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina

Tool, McLeod
4210–00–203–3512
NPA: Mississippi Industries for the Blind, Jackson, Mississippi at its facility in Meridian, Mississippi

Vegetable Oil
8945–00–NSH–0001
NPA: Advocacy and Resources Corporation (ARC), Cookeville, Tennessee

Services

Commissary Shelf Stocking, Custodial and Warehousing
Fairchild Air Force Base, Washington
NPA: Pre-Vocational Training Center, Spokane, Washington

Janitorial/Custodial

MG William Weigel USARC, Edison, New Jersey
NPA: Edison Sheltered Workshop, Inc., Edison, New Jersey

Janitorial/Custodial

Wheeling Courthouse, 12th and Chaplin Streets, Wheeling, West Virginia
NPA: Russell Nesbitt Services, Inc., Wheeling, West Virginia

Operation of Postal Service Center, Davis-Monthan Air Force Base, Arizona
NPA: Catholic Community Services of Southern Arizona, Tucson, Arizona

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Starter Rope, Engine 2990–00–961–3692
2990–00–972–7950

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–6810 Filed 3–19–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 21, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 30, 1998, January 22 and 29, and February 5, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 65746 and 64 FR 3483, 4638 and 5764) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Cap, Combat Camouflage
8415–01–134–3175
8415–01–134–3176
8415–01–134–3177
8415–01–134–3178
8415–01–134–3179
8415–01–134–3180
8415–01–084–1683
8415–01–084–1684
8415–01–084–1685
8415–01–084–1686
8415–01–084–1687
8415–01–084–1688
(Remaining Government Requirements)

Insignia, Embroidered
8455–01–388–8485

Services

Commissary Shelf Stocking, Custodial and Warehousing
Fallon Naval Air Station, Fallon, Nevada

Grounds Maintenance
BRECC, 3900 Loch Raven Boulevard, Baltimore, Maryland

Janitorial/Custodial

Department of Veterans Affairs Lompoc Clinic, 1111 East Ocean Avenue, Lompoc, California

Janitorial/Custodial

Veterans Affairs Primary Care Clinic, 145 Falmouth Road, Hyannis, Massachusetts

Janitorial/Grounds Maintenance

VA Northern California Health Care System, Mare Island Outpatient Clinic, Vallejo, California

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–6811 Filed 3–19–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–848, A–580–838]

Initiation of Antidumping Duty Investigations: Certain Aperture Masks From Japan and South Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 22, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Ross, at (202) 482–4794, or Thomas Schauer, at (202) 482–4852; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to Department of Commerce (''Department'') regulations refer to the regulations codified at 19 CFR Part 351 (1998).

The Petitions

On February 24, 1999, the Department received petitions filed in proper form by BMC Industries, Inc. (''BMC,'' referred to hereafter as ''the petitioner''). The petitioner filed supplemental information to the petitions on March 8, 12, and 16, 1999.

The petitioner alleges that imports of certain aperture masks from Japan and South Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring, or threatening material injury to, a U.S. industry.

The Department finds that the petitioner has standing to file the petitions because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the antidumping investigations it is requesting the Department to initiate. See ''Determination of Industry Support for the Petitions'' below.

Scope of Investigations

For purposes of these investigations, the products covered consist of all aperture masks (also known as ''shadow

masks'') made from aluminum-killed, open-coil annealed steel (decarburized) (known generally as ''AK steel'') for color picture tubes (''CPTs'') used in television sets. AK steel includes the following types of steel: low carbon, AF (annealing-free) steel, AK type A steel (commonly referred to as AKM steel), AK type B steel, and general AK steel. The aperture masks covered by the scope generally have a vertical pitch (distance between the centers of two apertures) of greater than .28mm. Specifically excluded from the scope are the following products: (1) aperture masks made from FeNi 36 alloy (whether sold under the brand names Invar, Inovar or LLTE); (2) aperture masks that have a vertical pitch of less than .28 mm that are generally used for color display tubes (''CDTs'') used in computer monitors; and (3) grille masks (a grille mask replaces the slots in an aperture mask with an array of finely tensioned vertical wires).

The merchandise subject to these investigations is classifiable under 8540.91.50 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

During our review of the petitions, we discussed the scope with the petitioner to ensure that the scope accurately reflects the merchandise for which the domestic industry is seeking relief. Moreover, as we discussed in the preamble to the Department's regulations (62 FR at 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by April 5, 1999. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(c)(4)(A) of the Act requires that the Department determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry supports an antidumping petition. A petition meets this minimum requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Under section 732(c)(4)(D) of the Act, if the petitioner(s) account for more than 50 percent of the total production of the domestic like product, the Department is not required to poll the industry to determine the extent of industry support.

To determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The ITC, which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. However, while both the Department and the ITC must apply the same statutory definition of domestic like product, they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines domestic like product as ''a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the like-product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petitions, and as clarified by the March 8 and 12, 1999, supplements to the petitions, is the single product defined in the ''Scope of Investigation'' section, above. No party has commented on the petitions'' definition of domestic like product, and there is nothing on the record to indicate that this definition is inaccurate. The Department, therefore, has adopted this definition of the domestic like product.

With respect to the above-cited industry-support requirements, the Department has determined that the petitions and supplemental information contained adequate evidence of sufficient industry support. See Initiation Checklist, dated March 16, 1999 (public document on file in the Central Records Unit of the Department of Commerce, Room B–099). Additionally, no person who would qualify as an interested party pursuant to sections 771(A), (C), (D), (E), or (F) of the Act has expressed on the record opposition to the petitions. Information currently on the record indicates that the producer who supports the petitions accounts for 100 percent of the production of the domestic like product. Accordingly, the Department determines that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The petitioner identified three Japanese producers and one South Korean producer in its less-than-fair-value allegations. The Japanese producers are Dai Nippon Printing Co., Ltd. (''DNP''), Dainippon Screen Manufacturing Company, Ltd. (''DNS''), and Toppan Printing Co., Ltd. (''Toppan''). The South Korean producer is LG Micron Ltd. (''LGM''). The petitioner determined export prices for each of these producers based on price quotes obtained by the petitioner's sales personnel in the ordinary course of business. These price quotes are for various sizes of the aperture masks covered by the scope of the petitions. The petitioner provided trip reports and an affidavit from a BMC sales representative to support the validity of the price quotes. All U.S. price quotes were denominated in U.S. dollars and, where appropriate, the petitioner made adjustments for movement expenses. Our review of the petitioner's calculation of export prices did not indicate the need to make changes to those prices.

With respect to normal value for Japan, the petitioner could not find data regarding Japanese home market prices. Moreover, the petitioner alleges that the volume of Japanese domestic sales of in-scope merchandise is insufficient to form a basis for normal value. In support of its claims that pricing information is unavailable and that the Japanese domestic market is not viable, the petitioner provided an affidavit from a responsible BMC sales representative. The affidavit documents the employee's efforts to uncover pricing information and indicates that most of the aperture

[1] See *Algoma Steel Corp., Ltd.* v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

masks sold in Japan are types specifically excluded from the scope of the petitions (*e.g.*, aperture masks made from Invar). Lacking pricing information for sales of the foreign like product in the Japanese market, the petitioner turned to third-country sales as the basis for normal value in accordance with section 773(a)(1)(C) of the Act. However, as described in more detail below, the petitioner provided information in the petitions demonstrating reasonable grounds to believe or suspect that sales of certain aperture masks from Japan to third-country markets were made at prices below the cost of production (*i.e.*, the sum of the cost of materials and fabrication (*i.e.*, COM), selling, general and administrative (''SG&A'') expenses, and packing), within the meaning of section 773(b) of the Act. The petitioner therefore concluded that sales from Japan to third countries cannot serve as the basis for normal value. Furthermore, the petitioner requested that the Department conduct a countrywide investigation of sales below cost for third-country market sales from Japan.

With respect to normal value for South Korea, the petitioner stated that it believes that the volume of South Korean home market sales is sufficient to form a basis for normal value. The petitioner also provided information in the petitions demonstrating reasonable grounds to believe or suspect that sales of certain aperture masks in South Korea were made at prices below the cost of production, within the meaning of section 773(b) of the Act. The petitioner therefore concluded that sales in the South Korean home market cannot serve as the basis for normal value. Furthermore, the petitioner requested that the Department conduct a countrywide investigation of sales below cost for home market sales in South Korea.

To support its allegations that prices from Japan to third-country markets and prices in the South Korean home market are below the cost of production, the petitioner compared price quotes for each of the identified producers to each company's cost of production. The petitioner calculated the COM and packing components of the cost of production based on its own production experience with adjustments for known differences in costs incurred in the United States and costs incurred in Japan and South Korea. It derived company-specific SG&A expenses for the Japanese producers using each company's financial statements. For LGM, the South Korean producer of certain aperture masks, the petitioner said it was not able to obtain a financial statement for the calculation of SG&A expenses. However, since the petitioner could obtain the financial statements of LGM's parent company, LG Electronics, it calculated SG&A based on the financial statements of LG Electronics. We reviewed the cost-of-production calculations and accepted the underlying cost data contained in the petitions, as revised and/or supplemented by the March 8, 12, and 16, 1999, submissions.

We compared the cost-of-production data supplied in the petitions to the corresponding Japanese producers' third-country prices and the South Korean producer's home market prices. We found that the prices in every instance were below the cost of production. Thus, for both Japan and South Korea, these findings constitute ''reasonable grounds to believe or suspect'' that sales of the foreign like product were made below their respective cost of production within the meaning of section 773(b)(2)(A)(i) of the Act. See ''Initiation of Cost Investigation,'' below.

Since the petitioner found that the third-country prices of the Japanese producers and the home market prices of the South Korean producer were below the cost of production, the petitioner based normal value on constructed value. The petitioner calculated constructed value by adding profit to the figures that it used to compute the cost of production. It based profit on the same financial statements it used for the calculation of SG&A expenses. We reviewed the calculation of constructed value and accepted the underlying cost data contained in the petitions, as revised and/or supplemented by the March 8, 12, and 16, 1999, submissions.

Fair Value Comparison

Based on the data provided by the petitioner, we find that there is reason to believe that imports of certain aperture masks from Japan and South Korea are being, or are likely to be, sold at less than fair value.

The margin calculations in the petitions, as revised in the March 16, 1999, supplement to the petitions, indicate dumping margins ranging from 3.77 to 85.34 percent for certain aperture masks from Japan and a dumping margin of 10.61 percent for certain aperture masks from South Korea.

If it becomes necessary at a later date to consider the petitions as a source of facts available under section 776 of the Act, we may review and, if necessary, revise the margin calculations.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of imports of the subject merchandise sold at less than normal value. The petitioner explained that the industry's injured condition is evident in declining trends in capacity utilization, income growth, and profits. The allegations of injury and causation are supported by relevant evidence including lost sales and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are sufficiently supported by accurate and adequate evidence and they meet the statutory requirements for initiation. See Initiation Checklist, dated March 16, 1999.

Initiation of Antidumping Investigations

We have examined the petitions on certain aperture masks from Japan and South Korea and have found that they meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of certain aperture masks from Japan and South Korea are being, or are likely to be, sold in the United States at less than fair value.

Our preliminary determinations will be issued by August 3, 1999, unless the deadline for the determinations is extended.

Initiation of Cost Investigation

As explained above, the Department has found that there are ''reasonable grounds to believe or suspect'' that sales of certain aperture masks in the comparison markets for Japan and South Korea were made below their respective cost of production within the meaning of section 773(b)(2)(A)(i) of the Act. Therefore, we are initiating countrywide sales-below-cost investigations with respect to certain aperture masks from Japan and South Korea.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, copies of public versions of the petitions have been provided to the representatives of the Governments of Japan and South Korea.

International Trade Commission Notification

We have notified the ITC of our initiation of these investigations, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by April 12, 1999, whether there is a reasonable indication that imports of certain aperture masks from Japan and South Korea are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in termination of the investigations; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published in accordance with section 777(i) of the Act.

Dated: March 16, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–6934 Filed 3–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid From the People's Republic of China: Postponement of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limits for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is extending by 120 days the time limit of the preliminary results of the antidumping duty administrative review of the antidumping duty order on sebacic acid from the People's Republic of China (PRC) covering the period July 1, 1997, through June 30, 1998, since it is not practicable to complete this review within the time limits mandated by the Tariff Act of 1930, as amended.

EFFECTIVE DATE: March 22, 1999.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim, at (202) 482–2613; or John Maloney, at (202) 482–1503, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Postponement of Preliminary Results of Review: Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination in an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, section 751(a)(3)(A) of the Act provides that, when it is not practicable to complete the review within the specified time period, the Department may extend the time period for completing the preliminary results by 120 days. We determine that it is not practicable to complete the preliminary results of this review within the original time frame. *See* Decision Memorandum from Holly A. Kuga, Acting Deputy Assistant Secretary, to Robert S. LaRussa, Assistant Secretary. Accordingly, the deadline for issuing the preliminary results of this review is now due no later than July 31, 1999. In accordance with section 751(a)(3)(A) of the Act, we plan to issue the final results of this administrative review within 120 days after publication of the preliminary results.

Dated: March 12, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary Import Administration.

[FR Doc. 99–6832 Filed 3–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of 1997–1998 antidumping duty administrative review and new shipper review of stainless steel bar from India.

SUMMARY: On November 12, 1998, the Department of Commerce published the preliminary results of antidumping duty administrative review and new shipper review of the antidumping duty order on stainless steel bar from India. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made certain changes for the final results.

These reviews cover five producers/exporters of stainless steel bar to the United States during the period February 1, 1997, through January 31, 1998.

EFFECTIVE DATE: March 22, 1999.

FOR FURTHER INFORMATION CONTACT: Zak Smith, James Breeden, or Stephanie Hoffman, Import Administration, AD/CVD Enforcement Group I, Office 1, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–0189, 482–1174, or 482–4198, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, all references to the Department of Commerce's (''the Department's'') regulations are to 19 CFR Part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On November 12, 1998, the Department published the preliminary results of administrative review and new shipper review of the antidumping duty order on stainless steel bar from India (63 FR 63288) (''preliminary results''). The manufacturers/exporters in this administrative review are Bhansali Bright Bars Pvt. Ltd. (''Bhansali'') and Venus Wire Industries Limited (''Venus''). The manufacturers/exporters in this new shipper review are Sindia Steels Limited (''Sindia''), Chandan Steel Limited (''Chandan''), and Madhya Pradesh Iron & Steel Company (''Madhya''). We received a case brief from Madhya on December 18, 1998. We received case and rebuttal briefs from the petitioners [1] and the other respondents in February.

Scope of the Review

Imports covered by these reviews are shipments of stainless steel bar (''SSB''). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or

[1] Al Tech Specialty Steel Corp., Carpenter Technology Corp., Crucible Specialty Metals Division, Crucible Materials Corp., Electroalloy Corp., Republic Engineered Steels, Slater Steels Corp., Talley Metals Technology, Inc. and the United Steelworkers of America (AFL-CIO/CLC).

other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (i.e., cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Comparisons

We calculated export price and normal value based on the same methodology used in the preliminary results, with the following exceptions:

With respect to Bhansali, we conducted a cost investigation as discussed in the *Cost of Production Analysis* section, below. Also, we adjusted Bhansali's raw material inputs and scrap offset based on differences in the production processes used by Bhansali in the production of SSB (*see* Comment 5, below).

Cost of Production Analysis

Based on a cost allegation presented by the petitioners, the Department found reasonable grounds to believe or suspect that sales by Bhansali in the home market were made at prices below their respective costs of production (''COP''). As a result, on October 30, 1998, the Department initiated an investigation to determine whether Bhansali made home market sales during the period of review (''POR'') at prices below its COP, within the meaning of section 773(b) of the Act.

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of the cost of materials, fabrication, selling, general and administrative expenses, and packing costs.

B. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product are made at prices below the COP, we do not disregard any below-cost sales of that product because the below-cost sales were not made in ''substantial quantities.'' However, where 20 percent or more of a respondent's sales of a given product are made at prices below the COP, we disregard the below-cost sales because such sales are being made within an extended period of time in ''substantial quantities'' (*see* sections 773(b)(2)(B) and (C) of the Act) and because, based on comparisons of price to weighted-average COPs for the POR, we determine that the below-cost sales of the product are at prices which would not permit recovery of all costs within a reasonable period of time (*see* section 773(b)(2)(D) of the Act).

We found that Bhansali made home market sales at below COP prices within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. Therefore, we excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

Interested Party Comments

In accordance with 19 CFR 351.309, we invited interested parties to comment on our preliminary results. We received written comments from the respondents and the petitioners and rebuttal comments from Bhansali, Venus, Sindia, and Madhya.

Comment 1: Treatment of Alleged Below-Cost Sales as Outside the Ordinary Course of Trade

The petitioners state that the Department should exclude from its analysis certain third country sales made by Sindia and Venus that are allegedly below cost and, thus, outside the ordinary course of trade. They assert that by including such below-cost sales in the preliminary results, the Department erroneously made a negative determination of dumping. Furthermore, the petitioners argue that a cost allegation is not necessary because both Sindia and Venus submitted cost data that indicates that certain third country market sales were made below the cost of production. To correct this alleged error, the petitioners argue that the Department should exclude those below-cost sales from its analysis for the final determination.

Specifically, the petitioners argue that section 771(15) of the Act states that below-cost sales are outside the ordinary course of trade and, thus, should be excluded from the Department's analysis. The petitioners cite to *Mechanical Transfer Presses from Japan; Final Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Administrative Order in Part,* 63 FR 37331 (July 10, 1998) (''*Mechanical Transfer Presses*'') and *Mitsubishi Heavy Industries, Ltd.* v. *U.S.,* Slip Op. 98–82 (June 23, 1998) (''*Mitsubishi* v. *U.S.*'') to support their argument. According to the petitioners, in *Mechanical Transfer Presses,* the Department did not include sales that were found to be below the cost of production when calculating constructed value (''CV'') profit, even though no formal cost investigation was initiated. In *Mitsubishi* v. *U.S.,* the Court of International Trade (''CIT'') upheld the Department's decision to exclude below-cost sales in the calculation of selling, general, and administrative expenses (''SG&A'') and profit, even though no below-cost investigation was conducted. Furthermore, the petitioners argue that, even if sales are not excluded on the basis of being made below cost, they are still outside the ordinary course of trade because they were made at aberrationally low prices.

The respondents, Venus and Sindia, argue that the cases the petitioners rely upon are distinguishable from the present case. The respondents note that, in the investigation underlying *Mitsubishi* v. *U.S.,* the petitioner provided a timely allegation of sales made below cost, whereas, in the present case, the petitioners failed to make a timely allegation (*see Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan,* 61 FR 38139 (July 23, 1996) (''LNPP'').

The respondents also note that the two cases cited by the petitioners involved complex products and that the Department based normal value on CV. Thus, despite the lack of a formal cost investigation, the Department conducted an informal cost investigation. According to the respondents, the products included in this antidumping duty order are not complex in nature and there has not been a suggestion that CV should be used for normal value when price-to-price comparisons exist. Therefore, it is not necessary for the Department to self-initiate a sales below-cost investigation. Furthermore, the respondents note that in *Mechanical Transfer Presses* the Department had found below-cost sales in a prior review and, thus, had reason

to believe that there were below-cost sales in the current review. Again, the respondents note that they have never been found to have made sales below cost and, thus, any comparison to *Mechanical Transfer Presses* is inappropriate.

Lastly, the respondents argue that, in the present case, the Department can only conduct a meaningful cost analysis if the respondents submit a response to Section D (Cost of Production and Constructed Value) of the original questionnaire. Barring such a response, the respondents argue that the Department cannot determine whether a respondent would be able to recover costs over an extended period of time on the sales in question.

Department's Position: We disagree that these alleged below-cost sales should be disregarded as outside the ordinary course of trade. Contrary to the petitioners' assertion, the Act explicitly provides that *sales disregarded pursuant to a cost investigation* are outside the ordinary course of trade (*see* section 771(15) of the Act). In a cost investigation, the Department not only considers whether sales are below cost but also whether the below-cost sales are in substantial quantities within an extended period of time and are not at prices which permit the recovery of all costs within a reasonable period of time. As the Department stated in the preamble to its regulations:

> The statutory definition of ordinary course of trade * * * provides that only those below-cost sales that are ''disregarded under section 773(b)(1)'' of the Act are automatically considered to be outside the ordinary course of trade. In other words, the fact that sales of the foreign like product are below cost does not automatically trigger their exclusion. Instead, such sales must have been disregarded under the cost test before the Department will exclude them. * * *

See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27359 (May 19, 1997) (''*Final Rule*'').

We note that under the old law (i.e., prior to the amendments made to the Act by the URAA), the Department's practice was not to exclude below cost sales as outside the ordinary course of trade, regardless of the results of the cost test. *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Thailand; Final Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order,* 61 FR 33711, 33712 (June 28, 1996) (In calculating CV profit, we stated that we were rejecting petitioner's ''suggestion that below-cost sales are per se outside the ordinary course of trade); *Antifriction Bearings from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom,* 58 FR 39729 (July 26, 1993) (same); *cf. Certain Fresh Cut Flowers from Ecuador, 52 FR 2128 (January 20, 1987) (We rejected petitioner's argument from its case brief that home market sales should be disregarded as below cost by characterizing it as an untimely cost allegation). This practice was upheld by the CIT. See The Torrington Co.* v. *United States,* 960 F. Supp. 339, 343 (CIT 1997).

This is in contrast to the new law, which provides explicitly that sales that fail the cost test (i.e., those ''disregarded under section 773(b)(1)'' of the Act) are outside the ordinary course of trade. The Act does not provide for automatic exclusion of a sale simply because it is below cost. Therefore, consistent with the explicit requirements of the post-URAA Act and the Department's long-standing practice, we will not automatically exclude any of Venus' or Sindia's allegedly below cost sales as outside the ordinary course of trade as none of them have been disregarded pursuant to a cost investigation.

Furthermore, in *FAG (U.K.) Ltd.* v. *United States,* 24 F. Supp. 2d 297 (CIT 1998), the CIT stated that we may not initiate a cost investigation without ''reasonable grounds to believe or suspect'' that sales were made below the cost of production. According to the CIT, reasonable grounds may include (1) a sufficient allegation of below cost sales made by the petitioner; or (2) below cost sales disregarded in the previous review.

In the present case, the petitioners did not make a timely below-cost allegation and we have not found below-cost sales made by these companies in a previous review. Indeed, the only ''reasonable grounds'' we would have to initiate a cost investigation would be the petitioners' argument that the difference in merchandise (''difmer'') cost data indicates that the respondents have made sales below cost. However, this type of data is precisely the type of data that the petitioners could have used to construct a cost allegation (*see Final Rule,* at 62 FR 27335–273336). While the Department may consider whether this data, included as part of a cost allegation, provides reasonable grounds to initiate a formal cost investigation, to do so here would circumvent the rule that the petitioners bring a below-cost allegation within 20 days after the respondent files its comparison market questionnaire response. *See* 19 CFR 351.301(d)(2). Therefore, because we did not receive a timely below-cost allegation, and because we have not disregarded sales from the respondents as a result of a cost test in the most recent prior review, we find that we do not have reasonable grounds to begin a cost investigation. Thus, as only below-cost sales disregarded pursuant to a cost investigation may be disregarded as outside the ordinary course of trade, and we are not conducting a cost investigation, none of the respondents' alleged below-cost sales can be found to be outside the ordinary course of trade based solely on their below-cost status. As discussed in the next paragraph, the Department may make exceptions under certain unique circumstances. However, no such circumstances are present in this case.

The respondents are correct in stating that both *LNPP* and *Mechanical Transfer Presses* are distinguishable from the present case. Specifically, while we indicated that in certain situations we do have the authority to disregard below-cost sales absent a formal cost investigation, we also explained that our *normal practice* is to initiate a formal cost investigation before excluding below-cost sales as outside the ordinary course of trade. We explained that the ''unique circumstances'' of the cases required us to perform a cost analysis even though we did not formally initiate a cost investigation. In both cases, we found that the particular market situation did not permit proper price-to-price comparisons and, therefore, normal value was based on CV. When receiving the cost information for each sale, we were readily able to determine that certain sales were below cost and, thus, when calculating CV profit, we excluded those sales that would have been disregarded, had a formal cost test been conducted, as outside the ordinary course of trade. This review is in no way comparable to these cases, as we do not consider each sale to involve a separate model and, thus, extensive CV information has not been provided as a basis for normal value.

The argument that we should exclude sales that are outside the ordinary course of trade because they were made at aberrationally low prices is in effect an argument that below-cost sales should be excluded. The petitioners are making the same argument from a different angle. We have addressed it through our discussion of the alleged below-cost sales.

Therefore, as discussed above, and in accordance with the Act and our practice, we are not disregarding alleged below-cost sales made by Sindia and Venus in third country markets as outside the ordinary course of trade

without having disregarded those sales pursuant to a formal cost investigation.

Comment 2: Acceptance of Untimely Response

Madhya argues that the Department should accept its response to Section D (Cost of Production and Constructed Value) of the original questionnaire and to the Department's supplemental questionnaire, despite the Department's rejection of the response as untimely. While Madhya does not deny the fact that its response was untimely, it notes that it had communication difficulties with its counsel and believed that upon sending its submission, the response would be received by the deadline. Madhya also argues that its untimely submission did not impede the review, especially as the Department had a significant amount of time to complete the review as evidenced by the continued review and issuance of supplemental questions to Bhansali after the preliminary results. Thus, Madhya states that the new shipper review should proceed.

The petitioners argue that by failing to meet the Department's deadlines, Madhya voluntarily terminated its participation in this review and that the Department properly rejected Madhya's submission.

Department's Position: Section 351.302 of our regulations, among other things, explicitly sets forth the procedures for requesting an extension of time, the manner in which the Department will extend a deadline, and the circumstances by which we will return untimely submissions. Madhya was aware of these requirements, as they asked for several extensions throughout the proceeding. In fact, in this particular instance Madhya asked for three extensions. We granted the first two but denied the last request, because we did not receive an adequate explanation or reasoning as to why the extension was needed. Nonetheless, Madhya submitted its responses on September 17, 1998. However, because Madhya failed to meet an already extended deadline and provided no explanation as to why it did not meet the extended deadline, we rejected its response as untimely. Section 351.302(d) of our regulations states that unless the Secretary extends the time for submission, ''the Secretary will not consider or retain in the official record of the proceeding: (i) Untimely filed factual information. * * *'' While it may be true that Madhya had difficulties communicating with its counsel, that Madhya intended to respond in a timely manner, and that we had the administrative resources and time to conduct a full review, such argumentation and statements do not change the fact that Madhya missed the deadline to file its submission and that, in accordance with our regulations, we properly rejected and have not considered Madhya's untimely submission.

Comment 3: Application of Facts Available

Madhya argues that, because it has been cooperative and has not impeded the review, the application of adverse facts available against it in the preliminary results was inappropriate. Madhya cites *AK Steel Corp.* v. *U.S.*, 988 F. Supp. 594, 605 (CIT 1997) in support of its proposition that adverse facts available may only be imposed if the Department finds that a review has been impeded. With respect to the petitioners' contention that the Department should use the most adverse facts available, Madhya argues that the Department does not impose most adverse facts available when the circumstances are such that the respondent requested a review, the petitioner did not request a review, and when the respondent submitted responses to Department questionnaires (*see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.; Final Results of Antidumping Duty Administrative Reviews,* 57 FR 28360, 28391 (June 24, 1992).

Although the petitioners agree with the Department's use of adverse facts available in the preliminary results and our determination that Madhya was uncooperative, they disagree with our use of the ''all others'' rate established in the less-than-fair-value (''LTFV'') investigation as the adverse facts available rate. They argue that assigning Madhya this rate rewards the company for its failure to supply requested information because the ''all others'' rate is not the highest adverse rate. Thus, the petitioners state that the Department should assign the highest rate available for any respondent in the LTFV investigation, which was 21.02 percent applied to Mukand Ltd.

Department's Position: As noted in our preliminary results, Madhya failed to submit its questionnaire responses on time and failed to provide adequate reasons for its delays. Thus, we preliminarily determined that Madhya failed to cooperate to the best of its ability to comply with a request for information under section 776(b) of the Act. The respondent's contention that we may only use adverse facts available when a review has been impeded does not comport with the plain language of the statute, which states, ''If the administering authority * * * finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority * * *, the administering authority * * * may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.'' *See* section 776(b) of the Act. There is no suggestion in the statute or in our regulations that the measurement of whether a party has not acted to the best of its ability depends on whether the review has been impeded.

Thus, the issue is not whether Madhya impeded our review process, but rather if it failed to cooperate to the best of its ability. We gave Madhya ample opportunity to submit the information requested. However, instead of submitting the information by the third established deadline, its counsel requested yet another extension of the time limit because counsel had not yet heard from Madhya. Based on the above, Madhya failed to submit information in a timely manner. Consequently, the Department determined that Madhya did not cooperate to the best of its ability.

With regard to the petitioners' argument that we should apply the LTFV's highest rate as adverse facts available, we note that the statute and regulations provide us with discretion when selecting an adverse rate. Above all, the decision on appropriate adverse facts available must be made on a case-by-case basis. In selecting a margin which would appropriately reflect our decision to use adverse facts available for Madhya, we have taken into consideration the fact that, as a first-time respondent, its ability to comply with our requests for information could be distinguished from, for example, the ability of a more experienced company. We also note that Madhya did make some effort to respond to our requests for information. *See Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 62 FR 53287, 53291–53292 (October 14, 1997) (in which we examined the efforts the respondent made to comply with requests for information, the respondent's relative experience, and the relative levels of available calculated margins when selecting the appropriate adverse facts available margin).

In selecting a margin which would appropriately reflect our decision to use adverse facts available for Madhya, we examined the rates applicable to SSB from India throughout the course of the

proceeding. Also, in accordance with the Statement of Administrative Action (''SAA''), we considered the extent to which Madhya may benefit from its own lack of cooperation in determining whether the use of the 12.45 percent rate is sufficiently adverse under the circumstances of this case. *See* SAA, H. DOC No. 316, vol.1, 103d Cong., 2d Sess., at 870 (1994). Given Madhya's level of participation in this segment of the proceeding, we determine that this rate is sufficiently adverse to encourage full cooperation in future segments of the proceeding. Therefore, as adverse facts available, we are continuing to use a rate of 12.45 percent, which reflects the ''all others'' rate from the LTFV investigation and is the rate which applied to Madhya prior to this review.

Comment 4: Duty Drawback

The petitioners support the Department's preliminary determination that the respondents did not meet the Department's criteria for an upward adjustment to export price. The petitioners maintain that the respondents' use of duty drawback fails the Department's two-part test for drawback claims because the respondent did not provide documentation establishing: (1) A direct link between the duties imposed and those rebated, and (2) that the company imported a sufficient amount of raw materials to account for the drawback received.

The petitioners also argue that because the respondents have failed to document that there were sufficient imports to account for the drawback claimed, the Department should not offset the respondents' material costs by the claimed duty drawback amounts. Specifically, the petitioners note that, given the lack of documentation, the Department has no way of ensuring that imported inputs were used in the production of SSB and, thus, any adjustment to material input costs may exceed the amount of import duties paid.

The respondents argue that even if the Department does not grant an upward adjustment to the U.S. price for duty drawback, an adjustment should be made to reduce material costs. The respondents argue that the standards for evaluating the two different adjustments are not the same and that the Department has accepted the offset to material costs in past segments of this proceeding.

Department's Position: When evaluating a duty drawback program, we consider whether the import duty and duty drawback are directly linked to, and dependent upon, one another and whether the company claiming the adjustment can show that there were sufficient imports of the imported raw materials to account for the drawback received on the exported product (*see Certain Welded Carbon Standard Steel Pipes and Tubes from India,* 62 FR 47632, 47634 (September 10, 1997)).

None of the respondents have provided adequate documentation establishing a sufficient link between import duties paid and duty drawbacks generally received under the program. Moreover, there is no indication that any of the respondents imported inputs in sufficient quantities to account for rebates received under the program. In fact, Sindia stated that it did not import any goods under the credit it reported but instead transferred this credit to other parties. Venus stated that it is not possible to establish the link between import duties paid and duty drawbacks generally received because it often transferred its duty drawback license to other companies. Accordingly, as in the preliminary results, no adjustment to the U.S. price for duty drawback has been made.

As CV is not the basis for normal value, we have not offset material costs.

Comment 5: Application of Facts Available for Bhansali

The petitioners argue that Bhansali did not properly revise its methodology to account for the two different production processes it uses to make SSB and, therefore, the Department should rely on facts available for Bhansali. The petitioners allege that Bhansali has significantly impeded the proceeding by not supplying this information. Specifically, the petitioners argue that Bhansali has failed to account for the different yield losses between the two production processes. The petitioners argue that Bhansali's failure to provide a complete and accurate response prevents the Department from accurately determining whether Bhansali's comparison market sales were below the cost of production and in substantial quantities. Moreover, the petitioners argue that Bhansali is attempting to control the review process through the submission of piecemeal information. Thus, Bhansali should receive the ''all others'' rate from the LTFV investigation. The petitioners cite *Pistachio Group of the Association of Food Industries* v. *United States,* 671 F. Supp. 31, 40 (CIT 1987) and *Atlantic Sugar, Ltd.* v. *United States,* 744 F. 2d. 1556, 1560 (CIT 1997) in support of their argument.

Bhansali counters that it has responded to the Department's request to identify and quantify the differences between the two processes to the best of its ability. With respect to the yield loss ratio, the respondent argues that it does not track actual processing yield or losses in the production cycle in its accounting records and, therefore, it has reported the ratio it uses in its internal cost accounting and which it believes is the standard yield loss ratio for the industry. Furthermore, the respondent contends that the petitioners have not presented any evidence substantiating their argument that yield losses differ among the two production processes.

Department's Position: After reviewing the petitioners' concerns regarding Bhansali's methodology for calculating the yield loss for its respective production processes, we found it necessary to seek additional information in order to ensure that our calculations are as accurate as possible. Therefore, we allowed interested parties the opportunity to submit information with respect to Bhansali's yield loss ratio. In response to our request, the petitioners submitted an affidavit from a domestic producer of SSB attesting to the various yield losses applicable to the different production processes used by the respondent. Bhansali was unable to provide information supporting the number used in its calculations on a process-specific basis. Thus, for purposes of the final results, as facts available, we are adjusting Bhansali's raw material inputs based on the information submitted by the petitioners. In addition, because the production processes in question generate different amounts of scrap, we are also adjusting the scrap offset to account for the change in the yield loss.

We determine that, in accordance with section 776(a) of the Act, the use of facts available is appropriate because the necessary information on yield loss ratios was not available on the record. Specifically, while Bhansali did provide an estimated yield loss ratio it uses in its internal cost accounting in its normal course of business, it failed to provide information demonstrating how this estimate corresponds to actual yield loss attributable to the different processes it uses to produce SSB. Therefore, we find Bhansali's yield loss estimate does not reasonably reflect its differences in costs. Thus, when calculating the appropriate COP for each sale we applied, as facts available, a yield loss ratio that more reasonably conformed to the particular process used to produce the merchandise in question.

Comment 6: General and Administrative (''G&A'') and Interest Calculations

The petitioners argue that Bhansali's reported calculations of G&A and

interest expenses are not based on its audited financial statements. The petitioners assert that it is the Department's long-standing policy to calculate the G&A and interest expense ratios based on the full-year G&A expense and net interest expense as reported in the audited financial statements that most closely corresponds to the POR. *See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand,* 60 FR 29553, 29565 (June 5, 1995). Therefore, the Department should reject Bhansali's reported G&A and interest expenses and use the ratios that the petitioners calculated based on Bhansali's audited financial statements.

The respondent argues that by including the total amount of interest expense listed in its financial statements, the petitioners are double-counting interest expense. The respondent contends all financial expenses have been accounted for in its sales databases and, therefore, should be excluded from the calculation of the interest expense ratio. Furthermore, the respondent notes that the petitioners have included in their calculation the line item ''bank charges, commission and interest.'' The respondent argues that these expenses are also sale specific and should not be included in the calculation of interest expense.

The respondent further argues that the petitioners' calculation of the G&A expense ratio is erroneous because it double-counts depreciation expenses. The respondent notes that it included all depreciation expenses in the fixed overhead field. Therefore, Fixed overhead should be reduced by the amount of depreciation expenses allocated to G&A.

The respondent also notes that the petitioners included an amount for the employer's contribution in its calculation of the G&A ratio. This expense was already included in the direct labor field.

Department's Position: It is our standard practice to rely on a company's audited financial statements in calculating the G&A and interest expense ratios. Thus, we have recalculated the G&A and interest ratios using the profit and loss figures from the fiscal year that most closely corresponds to the POR. With respect to the calculation of the interest ratio, we included the total amount of interest expense listed in Bhansali's financial statements because we were unable to reconcile this amount to its specific sales. However, we did not include ''bank charges, commission and interest'' in this calculation, as the petitioners did, because the respondent reported these expenses in its sales listing. In addition, we did not include depreciation expenses or the employer's contribution in our calculation of the G&A ratio because the respondent accounted for these expenses in the fixed overhead and direct labor fields, respectively.

Comment 7: Scrap Sales

The petitioners allege that Bhansali's reported scrap income offset is overstated because it includes scrap sales outside the POR. Therefore, this figure should be adjusted downward.

The respondent argues that its calculation of scrap income offset is based on its most recently completed fiscal year and allocated to total raw materials consumed over the same period. The respondent further argues that its methodology represents a reasonable lag between production and scrap sales.

Department's Position: It is our standard practice to allow a company to report COP and CV figures based on its fiscal year if the company's fiscal year ends within three months of the POR. Given that Bhansali's most recently completed fiscal year ends two months after the POR, we find that the respondent's methodology for calculating the scrap income offset is reasonable.

Final Results of Review

As a result of these reviews, we find that the following margins exist for the period February 1, 1997, through January 31, 1998.

Manufacturer/Exporter	Margin (percent)
Bhansali	0.00
Venus	0.23
Sindia	0.19
Chandan	0.00
Madhya	12.45

Parties to the proceeding may request disclosure within five days after the date of announcement or, if there is no public announcement, within five days after the date of publication of this notice. *See* 19 CFR 351.224. The results of these reviews shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the reviews and for future deposits of estimated duties for the manufacturers/exporters subject to these reviews. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total value of those sales examined. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review and new shipper review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates established in the final results of these reviews; (2) for companies not covered in these reviews, but covered in previous reviews or the LTFV investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the most recent rate established for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews or any previous review or the original investigation, the cash deposit rate will be the ''all others'' rate of 12.45 percent established in the LTFV investigation (59 FR 66915, December 28, 1994).

These deposit requirements will remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This administrative review and new shipper review and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i)(1) of the Act.

Dated: March 12, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–6831 Filed 3–19–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of initiation of process to revoke export trade certificate of review No. 88–00001.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Illinois World Trade Center Association doing business as EXILL Trading Company. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to Illinois World Trade Center Association doing business as EXILL Trading Company.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (''the Act'') (15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III (''the Regulations'') are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on April 28, 1988 to Illinois World Trade Center Association doing business as EXILL Trading Company.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§§ 325.14(a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation. (§§ 325.10(a) and 325.14(c) of the Regulations).

The Department of Commerce sent to Illinois World Trade Center Association doing business as EXILL Trading Company on April 18, 1998, a letter containing annual report questions with a reminder that its annual report was due on June 12, 1998. Additional reminders were sent on July 9, 1998, and on September 30, 1998. The Department has received no written response to any of these letters.

On March 16, 1999, and in accordance with § 325.10(c)(1) of the Regulations, a letter was sent by certified mail to notify Illinois World Trade Center Association doing business as EXILL Trading Company that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because of the certificate holder's failure to file an annual report.

In accordance with § 325.10(c)(2) of the regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (§ 325.10(c)(2) of the regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (§ 325.10(c)(3) of the regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (§ 325.10(c)(4) of the regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (§§ 325.10(c)(4) and 325.11 of the regulations).

Dated: March 16, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–6843 Filed 3–19–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Exporters' Textile Advisory Committee; Notice of Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on March 30, 1999. The meeting will be from 2 p.m. to 4 p.m. in the Main Conference Room on the sixth floor at the office of Milliken & Company, 1045 6th Avenue, New York, New York.

The Committee provides advice and guidance to Department officials on the identification and surmounting of barriers to the expansion of textile exports, and on methods of encouraging textile firms to participate in export expansion.

The Committee functions solely as an advisory body in accordance with the provisions of the Federal Advisory Committee Act.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact William Dawson (202/482-5155).

Dated: March 16, 1999.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–6867 Filed 3–19–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031699A]

Dealer and Interview Family of Form - Southeast Region

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 21, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Poffenberger, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149 (305–361–4263).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Southeast Fisheries Science Center, NMFS is proposing to implement a procedural change in the existing reporting requirements under 50 CFR 622.5. This change would implement the use of an Interactive Voice Response (IVR) system to monitor Federally-permitted dealer purchases of quota-managed species. The IVR system uses a toll-free number that the dealers would call to report summary of purchases, enabling NMFS to determine when domestic harvest limits have been reached. Reports through the IVR system would need to be submitted within three days of the end of the reporting week.

Species that would be subject to IVR reporting include king and Spanish mackerel, snowy grouper, golden tilefish, greater amberjack and red snapper. Following a review of public comments received in response to this announcement, it is planned that only king mackerel dealers will be asked to participate in the developmental stage of the implementation.

II. Method of Collection

Mandatory dealer reporting via interactive voice response system.

III. Data

OMB Number: 0648–0013
Form Number: N/A
Type of Review: Regular submission
Affected Public: Business or other for-profit (seafood dealers)
Estimated Number of Respondents: 452
Estimated Time Per Response: 8 minutes
Estimated Total Annual Burden Hours: 1,072
Estimated Total Annual Cost to Public: $10,720

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 12, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–6819 Filed 3–19–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092898C]

Small Takes of Marine Mammals Incidental to Specified Activities; Construction of an Offshore Platform in the Beaufort Sea

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

ACTION: Notice of issuance of an interim incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of ringed seals by harassment incidental to construction of ice roads at the Northstar Development in the Beaufort Sea in state waters has been issued to BP Exploration (Alaska) Inc, 900 East Benson Boulevard, Anchorage, AK 99519 (BPXA).

DATES: This authorization is effective from March 15, 1999, through May 15, 1999, or until superseded by another IHA, whichever is earlier.

ADDRESSES: The application, authorization, and environmental assessment (EA) are available by writing to the Acting Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

A copy of the 8–volume final environmental impact statement (FEIS) or any of its separate volumes may be obtained upon written request from Mr. Tim Jennings, U.S. Army Corps of Engineers (Corps), Alaska District, Regulatory Branch, P.O. Box 898, Anchorage, AK 99506–0898. The Corps requests that reviewers request only those volumes that are necessary for review.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, Brad Smith, Western Alaska Field Office, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing IHAs under section 101(a)(5)(D) of the MMPA for activities in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer to that document.

Summary of Request

On August 14, 1998, NMFS received an application from BPXA requesting a 1-year authorization for the harassment of small numbers of several species of marine mammals incidental to construction of the Northstar development in the Alaskan Beaufort Sea. While a brief description of the

proposed activity is provided here, a more detailed description of the activity and the expected impact on marine mammals can be found in the application and FEIS, which are available upon request (see ADDRESSES).

BPXA proposes to produce crude oil from the Northstar Unit, which is located between 2 and 8 miles (mi)(3.2 and 12.9 kilometers (km)) offshore from Pt. Storkersen, AK. This unit is adjacent to the Prudhoe Bay industrial complex and is approximately 54 mi (87 km) northeast of Nuiqsut, a Native Alaskan community. During the period of the proposed authorization, the construction activity, proposed by BPXA in their application, was to include the construction of three ice roads: a first one from either West Dock or Pt. McIntyre to a gravel mine site, a second from a gravel mine site to Seal Island, and a third from the shore crossing of the pipeline following the pipeline route to Seal Island; the construction of a gravel island work surface for drilling and oil production facilities; and two pipelines, one to transport crude oil and one for gas for field injection. However, due in part to a delay in completion of the FEIS by the Corps on this action, BPXA notified NMFS, during the public comment period, that construction at Northstar would require 2 years instead of the 1 year originally proposed.

In order to avoid losing an entire year of development at Northstar, BPXA has determined that it may legally construct the ice road prior to the release of the FEIS because ice road construction and operation do not require a permit from the Corps under either section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) or section 404 of the Federal Water Pollution Control Act of 1972 as amended (33 U.S.C. 1344). Accordingly, BPXA has requested NMFS to issue an interim IHA in order to authorize the incidental harassment of ringed seals during ice road construction, maintenance, and operation this winter and spring. Additional work described previously in this document will not be authorized prior to completion of the Corp's process under the National Environmental Policy Act (NEPA).

Comments and Responses

A notice of receipt of BPXA's application and NMFS' proposed authorization was published on October 26, 1998 (63 FR 57096), and a 30-day public comment period was provided on the application and proposed authorization. During the comment period, comments regarding this application were received from the Marine Mammal Commission, the Alaska Eskimo Whaling Commission, the North Slope Borough, BPXA, the Seattle Audubon Society, and Greenpeace Alaska on behalf of several Alaskan environmental organizations. The concerns and recommendations made by these organizations have been given full consideration by NMFS in making its determination on whether to issue an Interim IHA. NMFS' response to all comments will be addressed in a future **Federal Register** document regarding issuance of a full 1-year IHA.

Description of the Action

Ice road construction is taking place during the 1998/99 winter. Ice roads constructed inside the barrier islands will be bottom-fast while ice roads offshore will be on artificially thickened floating ice. Island construction will be at the location of the existing man-made Seal Island. From January through March 1999, BPXA will construct only the ice road from the gravel mine site to Seal Island. The main ice road will be supplemented with an alternate ice road. The alternate ice road will be oriented parallel, approximately 1,200 ft (366 m) west of the main ice road from the gravel reload area to Seal Island. The alternate ice road is necessary to continue gravel hauling during maintenance and repair of the main ice road.

It is estimated that approximately 16,800 large-volume haul trips between the onshore mine site and a reload area in the vicinity of Egg Island and 28,500 lighter dump truck trips from Egg Island to Seal Island will be necessary to transport construction gravel to Seal Island. An additional 300 truck trips will be necessary to transport concrete-mat slope protection materials to the island.

Potential Effects on Marine Mammals

In winter and spring, ice road construction, travel, and activities are expected to displace some ringed seals along the ice road corridor. It is expected that the noise and general human activity early in the season will displace female seals away from activity areas that could negatively affect the female and young if birth lairs were constructed in or near the road corridor.

Effects of Activities on Subsistence Needs

The only marine mammal species expected to be affected by the construction, maintenance, and operation of the ice roads will be the ringed seal. While Northstar activity has some potential to influence subsistence seal hunting activities, the most important sealing area for Nuiqsut hunters is off the Colville Delta, extending as far west as Fish Creek and as far east as Pingok Island. Pingok Island is about 24 km (15 mi) west of Northstar. However, since the peak season for seal hunting is during the summer months (although some hunting is conducted on the landfast ice in late spring), there is no evidence that ice road construction will have an unmitigable adverse impact on the subsistence needs for marine mammals.

Mitigation

In order to protect ringed seals from harassment, injury or mortality during construction of the ice road prior to issuance of the requested Interim IHA, BPXA voluntarily conducted a pre-construction marine mammal survey and site inspection 600 ft (183 m) on both sides from the center of the ice road corridor from south of Egg Island to Seal Island using five biologists and two Inupiat seal hunters. This survey indicated that no seals were inhabiting the ice road corridor.

Mitigation measures have been proposed by BPXA to reduce harassment takes to the lowest level practicable. Those mitigation requirements, which have been incorporated into the IHA, include: (1) Begin winter construction activities prior to female ringed seals establishing the birthing lair in late March to early April in order to displace seals away from activities that could negatively affect the female and young, and (2) Survey any undisturbed (unsurveyed) area(s) to identify and avoid ringed seal lairs by a minimum of 50 m (164 ft), if construction activities are initiated in previously undisturbed areas after March 20.

Monitoring

Monitoring will employ both marine mammal observations and acoustics measurements and recordings. During the ice-covered season, BPXA proposes to continue an ongoing (since the spring, 1997) Before-After/Control-Impact (BA/CI) Study on the distribution and abundance of ringed seals in relation to development of the offshore oil and gas resources in the central Beaufort Sea. Collection and analysis of data before and after construction are expected to provide a reliable method for assessing the impact of oil and gas activities on ringed seal distribution in the Northstar construction area.

Other winter/spring monitoring will include (1) on-ice searches for ringed seal lairs in areas where ice-road construction starts after mid-March, (2)

late winter aerial survey and assessment of abandonment rates for seal holes, and (3) acoustic measurements of gravel hauling and new ice-road construction sounds.

While the monitoring plan has been reviewed by NMFS biologists, NMFS has determined that independent peer review is not warranted for the on-ice portion of the plan. This work has been underway since the 1997/98 winter and will continue for several year. On-ice monitoring was reviewed in general during the May, 1998 peer-review workshop held in Seattle, WA and recommendations made at that workshop are reflected in this monitoring plan. NMFS expects however, that the open-water season monitoring plan will be reviewed next spring at the annual peer-review workshop held in Seattle.

Reporting

BPXA will provide an initial report on 1999 activities to NMFS within 90 days after the ice roads are no longer usable or spring aerial surveys are completed, whichever is later. This report will provide summaries of the dates and locations of construction activities, details of marine mammal sightings, and estimates of the amount and nature of marine mammal takes.

A draft final technical report will be submitted to NMFS by April 1, 2000. The final technical report will contain a full description of the methods, results, and interpretation of all monitoring tasks. The draft final report will be subject to peer review before being finalized by BPXA.

NEPA

On February 5, 1999 (64 FR 5789), the Environmental Protection Agency noted the availability for public review and comment, an FEIS prepared by the Corps under NEPA on Beaufort Sea oil and gas development at Northstar. Comments on that document were accepted by the Corps until March 8, 1999. NMFS is a cooperating agency, as defined by the Council on Environmental Quality regulations (40 CFR 1501.6), in the preparation of this document.

Because ice road construction does not require a permit from the Corps under either section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) or section 404 of the Federal Water Pollution Control Act of 1972 as amended (33 U.S.C. 1344), BPXA has determined that it may legally construct the ice road prior to release of the FEIS. In addition, because ice roads are temporary structures that will disappear in late spring, NMFS has determined that there will not be an irreversible commitment of resources under NEPA.

In conjunction with the request from BPXA for an interim IHA, an EA has been prepared that addresses the impacts on the human environment from issuance of the authorization and the alternatives to the issuance of an Interim IHA. As a result of the findings made in the EA, NMFS has concluded that the implementation of either the preferred alternative or of other identified alternatives would not have a significant impact on the human environment. As a result of that finding, a DEIS will not be prepared on this action. A copy of the EA is available upon request (see **ADDRESSES**).

Consultation

Under section 7 of the Endangered Species Act (ESA), NMFS will complete formal consultation with the Corps on the Beaufort Sea oil and gas development project at Northstar. NMFS will also consult with itself on the issuance of an incidental harassment authorization for this activity. If an authorization to incidentally harass listed marine mammals is issued under the MMPA, NMFS will issue an Incidental Take Statement under section 7 of the ESA for listed marine mammals. The Interim IHA, however, will not result in taking any listed marine mammals.

Conclusions

NMFS has determined that the impact of constructing ice roads at the Northstar Development in the U.S. Beaufort Sea will result, at worst, in a temporary modification in behavior by ringed seals. During the ice-covered season, ringed seals in the vicinity of the ice roads may be incidentally harassed due to the noise created by construction and may also be subject to displacement from lairs and/or breathing holes due to construction of ice roads and to transportation activities on that road. However, NMFS concludes that this harassment and possible displacement have been significantly mitigated due to BPXA on-ice surveys described previously. While behavioral modifications may be made by ringed seals to avoid the resultant noise, this behavioral change is expected to have no more than a negligible impact on a few individual animals. As cetaceans and species of seals other than ringed seals will not be in the area during the ice-covered season, they will not be affected. In addition, no take by injury and/or death is anticipated. No rookeries, areas of concentrated mating or feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

While ice road construction at Northstar has some potential to influence seal hunting activities by residents of Nuiqsut, NMFS believes that ice road construction at Northstar will not have an unmitigable adverse impact on the availability of ringed seals for subsistence uses.

Since NMFS is assured that the taking would (1) result in no more than the incidental harassment (as defined by the MMPA Amendments of 1994) of small numbers of ringed seals, (2) have only a negligible impact on this stock, (3) have only an unmitigable adverse impact on the availability of this stock for subsistence uses, and (4) result in the least practicable impact on the stock, NMFS has determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and that the authorization can be issued.

Authorization

Accordingly, NMFS has issued an Interim IHA to BPXA for the taking of ringed seals incidental to the construction, maintenance, and operation of ice roads at Northstar during the 1999 on-ice season provided the mitigation, monitoring, and reporting requirements described in the authorization are undertaken.

Dated: March 15, 1999.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–6818 Filed 3–19–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031699B]

Marine Mammals; File No. 782–1355

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

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. Douglas P. DeMaster, Director, National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070, has requested an amendment to scientific research Permit No. 782–1355.

DATES: Written or telefaxed comments must be received on or before April 21, 1999.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, National Marine Fisheries Service, NOAA, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 782–1355, issued on July 15, 1997 (62 FR 39826) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 782–1355 authorizes the permit holder to take Pacific Harbor seals (*Phoca vitulina*) in the following manner: harass during census flights; capture, restrain, measure (weight length, girth), sample (flipper punch, vibrissa, blood, blubber/muscle biopsy, ultra sound, enema), radio tag, flipper tag, and release 500 animals; and incidentally harass up to 2500 during the conduct of these activities, and during collection of scat samples from haulouts. The permit holder requests authorization to: conduct the above activities on ringed seals (*Phoca hispida*); and harass ringed seals, bearded seals (*Erignathus barbatus*), ribbon seals (*Phoca fasciata*), and spotted seals (*Phoca largha*) during aerial stock assessments.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 16, 1999.

Jeannie Drevenak,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–6926 Filed 3–19–99; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Industrial Capabilities Questionnaire; DD Form 2737; OMB Number 0704–0377.

Type of Request: Reinstatement.

Number of Respondents: 12,800.

Responses per Respondent: 1.

Annual Responses: 12,800.

Average Burden per Response: 12 hours.

Annual Burden Hours: 153,600.

Needs and Uses: As part of its responsibilities to facilitate a diverse, responsive, and competitive industrial base, the Department of Defense (DoD) requires accurate, pertinent, and up to date information as to industry's ability to satisfy defense needs. The industrial Capabilities Questionnaire will be used by all Services and the Defense Logistics Agency to gather business, industrial capability (employment, skills, facilities, equipment, processes, and technologies), and manufactured end item information to conduct required industrial assessments and to support DoD strategic planning and decisions. Respondents are industry professionals who provide information to the requesting DoD agency on the industrial capabilities associated with the subject facility being reviewed. The DoD agencies are directed to solicit only those data elements within this form necessary to conduct the particular planing or assessment task at hand. This approach is used to minimize the burden for data requests on industry and limit the retention of in-house data to that essential to supporting defense decisions and plans. A significant portion of this information will be collected electronically and, with appropriate measures to protect sensitive data, will be made available to authorized users in the Department to support a wide variety of industrial capability analysis. These analyses are used to support cost effective acquisition of defense systems and key troop support/consumable items, assess the implications of changes in defense spending on industry, development of responsive logistics support efforts, and industrial preparedness planning and readiness analysis. The lack of accurate, current, and relevant industry capability information will adversely impact the integrity of the Department's decision and planning efforts.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations of the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 16, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–6823 Filed 3–19–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Invites Public Submissions for Medal of Honor Award Recommendation for Theodore Roosevelt

AGENCY: Army, DoD.

ACTION: Notice (Request for Public Comments).

SUMMARY: Beginning on April 1 and ending on May 31, 1999, the U.S. Army invites the public to submit information about Theodore Roosevelt's battlefield courage in the attack on San Juan

Heights during the Spanish-American War.

DATES: Comments must reach the Center of Military History no later than May 31, 1999.

ADDRESSES: Persons interested in providing their written comments may submit them to: Roosevelt MOH Panel, U.S. Army Center of Military History, 103 Third Avenue, Building 35, Fort Lesley J. McNair, DC 20319–5058. Public submissions received after May 31, 1999 will not be considered.

FOR FURTHER INFORMATION CONTACT: Dr. Graham A. Cosmas, (202) 685–2065, or e-mail to cosmaga@hqda.army.mil .

SUPPLEMENTARY INFORMATION: This announces the invitation of public submissions of information about Theodore Roosevelt's battlefield courage in the attack on San Juan Heights during the Spanish-American War. Public comment will be accepted by the U.S. Army Center of Military History beginning on April 1, 1999 and ending on May 31, 1999.

The U.S. Army is reviewing then-Colonel Roosevelt's record of valor in the Spanish-American War at the request of Congress. The 60-day public comment period is part of the Army's effort to comply with congressional intent with regard to Pub. L. 105–371, which is a bill authorizing and requesting the President to award the Congressional Medal of Honor posthumously to Theodore Roosevelt.

An independent panel of historians will review the public submissions and then provide a formal report of Roosevelt's valor. Following the review process, the Army will advise the President on whether Roosevelt should be awarded the Medal of Honor.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–6923 Filed 3–19–99; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers; Scoping Meetings for Nationwide Permit Program Programmatic Environmental Impact Statement

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of Intent and request for comments.

SUMMARY: The Corps is initiating a Programmatic Environmental Impact Statement (PEIS) for the entire Nationwide Permit Program (NWP) to be completed by December 2000. The overall purpose of the PEIS is to review and evaluate the NWP program as a whole, to ensure that the NWP program authorizes only those activities with minimal individual and cumulative adverse environmental effects on the aquatic environment. This notice is intended to provide other Federal agencies, States, Tribes and the public the opportunity to participate in the scoping of the PEIS. The Corps will hold three meetings to solicit comments on the scope of the PEIS. Comments may be submitted in person at the meeting or in writing to the address given below.

DATES: Written comments must be submitted on or before June 4, 1999.

The meeting dates are:

1. May 4, 1999, at 1:00–5:00 p.m. and 7:00–10:00 p.m., Sacramento, CA.
2. May 6, 1999, at 1:00–5:00 p.m. and 7:00–10:00 p.m., Fort Worth, TX.
3. May 24, 1999, at 1:00–5:00 p.m., Washington, D.C.

ADDRESSES:

The meeting locations are:

1. Sacramento—Clarion Hotel, 700 Sixteenth Street, Sacramento, CA, 95814
2. Fort Worth (downtown)—Fritz G. Lanham Federal Building (Taylor Street Entrance, 1st floor), 819 Taylor Street, Fort Worth, TX 76102
3. Washington, DC—National Guard Association Building, One Massachusetts Avenue, NW, Washington, DC 20001.

Send written comments to Mr. Robert Brumbaugh, CEWRC–IWR–P, Casey Building, 7701 Telegraph Road, Alexandria, Virginia 22315–3868.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brumbaugh, CEWRC–IWR–P, at (703) 428–6370.

SUPPLEMENTARY INFORMATION: On July 1, 1998, the Corps published a Notice document (63 FR 36040, July 1, 1998) containing a proposal to issue 6 new NWPs and modify 6 existing NWPs to replace NWP 26. Further modifications were proposed on October 14, 1998 (63 FR 55095, October 14, 1998) which included withdrawing one of the proposed NWPs, the addition of restrictions on the use of certain NWPs, and extending the NWP process and the expiration of NWP 26 to September 15, 1999. On June 23, 1998, the Corps issued a Finding of No Significant Impact for the NWP program which states that the NWP program does not have significant effects on the quality of the human environment and therefore the preparation of an EIS is not required by NEPA.

Although the Corps determined that an EIS was not required by NEPA, it announced in the July 1, 1998 Notice document (63 FR 36040, July 1, 1998) that it would prepare a PEIS for the entire NWP program. The overall purpose of the PEIS is to review and evaluate the NWP program as a whole, to ensure that the NWP program authorizes only those activities with minimal individual and cumulative adverse effects on the aquatic environment. The PEIS will provide a programmatic comprehensive and structured review of the effects of the NWP program on the environment. The intent of the PEIS is to evaluate the procedures and process associated with the NWP program and not to examine impacts associated with individual NWP authorizations.

Some of the issues to be addressed in the PEIS include the following: programmatic and procedural alternatives to be evaluated; procedures to evaluate and ensure minimal effects; procedures to ensure protection of endangered species and historic and cultural resources; and evaluation and analysis of costs to the regulated public (including administrative, opportunity and delay costs) and benefits to the public (including navigation, water quality, wetlands, and other public interest benefits).

The scoping meeting will focus on identifying programmatic and procedural alternatives (e.g., combination of Regional General Permits and NWPs), methods of collecting and analyzing NWP data, and other substantial environmental issues to be addressed in the PEIS.

The Corps expects to complete preparation of the Draft PEIS by August 2000. The Final PEIS will be completed by December 2000. Public meetings to present preliminary study findings are planned to be held prior to publication of the Draft PEIS.

Dated: March 17, 1999.

Charles M. Hess,

Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 99–6891 Filed 3–19–99; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Coastal Engineering Research Board (CERB)

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meeting: April 14–16, 1999.

Place: The Ilikai Hotel, Honolulu, Hawaii.

Time: 8:30 a.m. to 4:30 p.m. (April 14, 1999); 9:00 a.m. to 10:45 a.m. (April 15, 1999); 9:00 a.m. to 12:00 p.m. (April 16, 1999).

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to Colonel Robin R. Cababa, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199.

SUPPLEMENTARY INFORMATION:

Proposed Agenda: The theme of the meeting is Military Applications of Coastal Engineering. The session on April 14 will consist of a review of CERB business, presentations pertaining to the theme, such as Examples of Past Contributions, Rapidly Installed Breakwater System/Logistics-Over-the-Shore (LOTS), Operations and Research Needs, Office of Naval Research Program, Military Applications of Civil Works Modeling Capabilities, Military Applications of Airborne Lidar Bathymetry, and Naval LOTS Program. Presentations will also include the Iwakuni Air Field Project and the Alaska District Coastal Projects. On the morning of April 15, the presentations include Summary of Marine Board Study on Coastal Engineering Research and Education Needs, Honolulu Coastal projects, Island harbors, New Directions in Coastal Research Needs, and Field Trip overview. The afternoon is devoted to a field trip to the Kaneohe Marine Corps Base for a beach invasion demonstration. On the morning of April 16, presentations include Future Direction of Corps' Shore Protection Program, Geographic Distribution of Coastal Engineering Projects, Hurricane Evacuation Studies for the Islands, and Disaster Related Issues on the Islands.

This meeting is open to the public; participation by the public is scheduled for 11:15 a.m. on April 16.

The entire meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Robin R. Cababa,

Colonel, Corps of Engineers, Executive Secretary.

[FR Doc. 99–6922 Filed 3–19–99; 8:45 am]

BILLING CODE 3710–PU–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Regulatory Guidance Letters Issued by the Corps of Engineers

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide current Regulatory Guidance Letters (RGLs) to all interested parties. RGLs are used by the U.S. Army Corps of Engineers Headquarters as a means to transmit guidance on the permit program (33 CFR parts 320–330) to its division and district commanders. Each future RGL will be published in the Notice Section of the **Federal Register** as a means to insure the widest dissemination of this information while reducing costs to the Federal Government. The Corps no longer maintains a mailing list to furnish copies of the RGLs to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Smith, Regulatory Branch, Office of the Chief of Engineers at (202) 761–0201.

SUPPLEMENTARY INFORMATION: RGLs were developed by the Corps as a system to organize and track written guidance issued to its field agencies. RGLs are normally issued as a result of evolving policy; judicial decisions and changes to the Corps regulations or another agency's regulations which affect the permit program. RGLs are used only to interpret or clarify existing Regulatory Program policy, but do provide mandatory guidance to Corps district offices. RGLs are sequentially numbered and expire on a specified date. However, unless superseded by specific provisions of subsequently issued regulations or RGLs, the guidance provided in RGLs generally remains valid after the expiration date. The Corps incorporates most of the guidance provided by RGLs whenever it revises its permit regulations. We are hereby publishing all *current* RGLs, beginning with RGL 94–1 and ending with RGL 96–2. RGLs 92–1, 92–3, and 92–5 expired on December 31, 1997, and RGL 93–1 and 93–2 expired on December 31, 1998. All five RGLs have been removed from this publication. We will continue to publish each RGL in the Notice Section of the **Federal Register** upon issuance and in early 2000, we will again publish the complete list of all current RGLs.

Dated: March 17, 1999.

Charles M. Hess.

Chief, Operations Division, Directorate of Civil Works.

Regulatory Guidance Letter (RGL 94–1)

Issued: May 23, 1994, EXPIRES: December 31, 1999.

Subject: Expiration of Geographic Jurisdictional Determinations.

1. Regulatory Guidance Letter (RGL) 90–6, Subject: ''Expiration Dates for Wetlands Jurisdictional Delineations'' is extended until December 31, 1999, subject to the following revisions.

2. This guidance should be applied to all jurisdictional determinations for all waters of the United States made pursuant to section 10 of the Rivers and Harbors Act of 1899, section 404 of the Clean Water Act, and section 103 of the Marine Protection Research and Sanctuaries Act of 1972.

3. To be consistent with paragraph IV.A. of the January 6, 1994, interagency Memorandum of Agreement Concerning the Delineation of Wetlands for Purposes of section 404 of the Clean Water Act and subtitle B of the Food Security Act, all U.S. Army Corps of Engineers geographic jurisdictional determinations shall be in writing and normally remain valid for a period of five years. The Corps letter (see paragraph 4.(d) of RGL 90–6) should include a statement that the jurisdictional determination is valid for a period of five years from the date of the letter unless new information warrants revision of the determination before the expiration date.

4. For wetland jurisdictional delineations the ''effective date of this RGL'' referred to in paragraphs 4 and 5 of RGL 90–6 was and remains August 14, 1990. For jurisdictional determinations, other than wetlands jurisdictional delineations, the ''effective date of this RGL'' referred to in paragraphs 4 and 5 of RGL 90–6 will be the date of this RGL.

5. Previous Corps written jurisdictional determinations, including wetland jurisdictional delineations, with a validity period of three years remain valid for the stated period of three years. The district engineer is not required to issue new letters to extend such period from three years to a total of five years. However, if requested to do so, the district engineer will normally extend the three year period to a total of five years unless new information warrants a new jurisdictional determination.

6. Districts are not required to issue a public notice on this guidance but may do so at their discretion.

7. This guidance expires on December 31, 1999 unless sooner revised or rescinded.

For the Director of Civil Works.

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Regulatory Guidance Letter (RGL 94–2)

Issued: August 17, 1994, EXPIRES: December 31, 1999.

Subject: Superfund Projects.

1. Regulatory Guidance Letter (RGL) 85–07, subject: ''Superfund Projects'' is hereby reissued (copy enclosed).

2. This RGL was previously extended by RGL 89–2. Although the extension expired, RGL 85–07 has continued to be U.S. Army Corps of Engineers policy.

3. This guidance expires December 31, 1999 unless sooner revised or rescinded.

For the Director of Civil Works.

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Regulatory Guidance Letter (RGL 95–1)

Issued: March 31, 1995, EXPIRES: December 31, 2000.

Subject: Guidance on Individual Permit Flexibility for Small Landowners.

1. Enclosed is a memorandum for the field signed by the Acting Assistant Secretary of the Army (Civil Works) and the Environmental Protection Agency dated March 6, 1995. This memorandum provides guidance on flexibility that the U.S. Army Corps of Engineers should apply when making determinations of compliance with the section 404(b)(1) Guidelines with regard to the alternatives analysis.

2. This memorandum should be implemented immediately. It constitutes an important aspect of the President's Plan for protecting the Nation's wetlands, ''Protecting America's Wetlands: A Fair, Flexible, and Effective Approach'' (published on August 24, 1993).

3. This guidance expires on December 31, 2000 unless sooner revised or rescinded.

For the Director of Civil Works.

Daniel R. Burns, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

United States Environmental Protection Agency, Office of Water, Washington, DC 20460

United States Department of the Army, Office of the Assistant Secretary, Washington, DC 20310–0103

Memorandum for the Field

March 6, 1995.

Subject: Individual Permit Flexibility for Small Landowners.

In order to clearly affirm the flexibility afforded to small landowners under section 404 of the Clean Water Act, this policy clarifies that for discharges of dredged or fill material affecting up to two acres of non-tidal wetlands for the construction or expansion of a home or farm building, or expansion of a small business, it is presumed that alternatives located on property not currently owned by the applicant are not practicable under the section 404(b)(1) Guidelines.

Specifically, for those activities involving discharges of dredged or fill material affecting up to two acres into jurisdictional wetlands for:

(1) The construction or expansion of a single family home and attendant features, such as a driveway, garage, storage shed, or septic field;

(2) The construction or expansion of a barn or other farm building; or

(3) The expansion of a small business facility;

which are not otherwise covered by a general permit, it is presumed that alternatives located on property not currently owned by the applicant are not practicable under the section 404(b)(1) Guidelines. The Guidelines' requirements to appropriately and practicably minimize and compensate for any adverse environmental impacts of such activities remain.

Discussion

The Clean Water Act Section 404 regulatory program provides that the Army Corps of Engineers evaluate permit applications for the discharge of dredged or fill material into waters of the U.S., including wetlands, in accordance with regulatory requirements of the section 404(b)(1) Guidelines (Guidelines). The Guidelines are substantive environmental criteria used in evaluating discharges of dredged or fill material.

The Section 404(b)(1) Guidelines establish a mitigation sequence that provides a sound framework to ensure that the environmental impacts of permitted actions are acceptable. Under this framework, there is a three-step sequence for mitigating potential adverse impacts to the aquatic environment associated with a proposed discharge—first avoidance, then minimization, and lastly compensation for unavoidable impacts to aquatic resources.

The Guidelines' mitigation sequence is designed to establish a consistent approach to be used in ensuring that all practicable measures have been taken to reduce potential adverse impacts associated with proposed projects in wetlands and other aquatic systems. The Guidelines define the term ''practicable'' as ''available and capable of being done [by the applicant] after taking into consideration cost, existing technology, and logistics in light of overall project purposes'' (40 CFR 230.3(q)). The first step in the sequence requires the evaluation of potential alternative sites under § 230.10(a) of the Guidelines, to locate the proposed project so that aquatic impacts are avoided to the extent practicable.

This policy statement clarifies that, for the purposes of the alternatives analysis, it is presumed that practicable alternatives are limited to property owned by the permit applicant in circumstances involving certain small projects affecting less than two acres of non-tidal wetlands. This presumption is consistent with the practicability considerations required under the Guidelines and reflects the nature of the projects to which the presumption applies—specifically, the construction or expansion of a single family home and attendant features, the construction or expansion of a barn or other farm building, or the expansion of a business. For such small projects that would solely expand an existing structure, the basic project purpose is so tied to the existing structures owned by the applicant, that it would be highly unusual that the project could be practicably located on other sites not owned by the applicant. In these cases, such as construction of driveways, garages, or storage sheds, or with home and barn additions, proximity to the existing structure is typically a fundamental aspect of the project purpose.

In the evaluation of potential practicable alternatives, the Guidelines do not exclude the consideration of sites that, while not currently owned by the permit applicant, could reasonably be obtained to satisfy the project purpose. However, it is the experience of the Army Corps of Engineers and EPA that areas not currently owned by the applicant have, in the great majority of circumstances, not been determined to be practicable alternatives in cases involving the small landowner activities described above. Cost, availability, and logistical and capability considerations inherent in the determination of practicability under the Guidelines have been the basis for this conclusion by the agencies.

The agencies recognize that the presumption characterized in this policy statement may be rebutted in certain circumstances. For example, a more thorough review of practicable alternatives would be warranted for individual sites comprising a subdivision of homes, if following issuance of this policy statement, a real estate developer subdivided a large, contiguous wetlands parcel into numerous parcels. In addition, the presumption is applicable to the expansion of existing small business facilities. Small businesses are typically confined to only one location and with economic and logistical limitations that generally preclude the availability of practicable alternative locations to meet their expansion needs. Conversely, larger businesses with multiple locations and greater resources are expected to consider opportunities to practicably avoid adverse aquatic impacts by evaluating off-site alternatives.

Finally, it is important to note that this presumption of practicable alternatives is intended to apply to the individual permit process. Alternatives are not evaluated for activities covered by general permits. Many activities related to the construction or expansion of a home, farm, or business, are already covered by a general permit. In addition, in conjunction with the issuance of this policy statement, a nationwide general permit authorizing discharges related to single family residential development is being proposed and will be available for public comment.

If you have any questions regarding this memorandum, please contact Gregory Peck of EPA's Wetlands Division at (202) 260–8794

or Michael Davis of the Corps of Engineer's Regulatory Branch at (202) 272–0199.

Robert Perciasepe

Assistant Administrator for Water, U.S. Environmental Protection Agency.

John Zirschky,

Acting Assistant Secretary of the Army (Civil Works).

Regulatory Guidance Letter (RGL 96–1)

Issued: November 5, 1996, Expires: December 31, 2001.

Subject: Use of Nationwide Permit Number 23 for U.S. Coast Guard Categorical Exclusions.

1. We have concurred with the categorical exclusions (CE) enclosure submitted by the United States Coast Guard (Coast Guard) pursuant to the subject nationwide permit number 23 at 33 CFR part 330, including a notification requirement for CE numbers (6) and (8). The U.S. Army Corps of Engineers published the Coast Guard CEs in 61 FR 18573, April 26, 1996, for comment regarding the applicability of nationwide permit number 23 for those activities requiring Department of the Army authorization. This Regulatory Guidance Letter supersedes the Coast Guard CEs previously approved under nationwide permit number 23 in accordance with Regulatory Guidance Letter 83–5, dated April 18, 1983.

2. The Corps has conditioned the nationwide permit to require notification to the appropriate Corps office prior to beginning work under Coast Guard CE number (6) to address potential impacts to wetlands (notification is only required to the Corps for projects where wetland impacts are proposed) and number (8) to address potential impacts/encroachment on Federal navigation projects. The District Engineer will review the notification and will either verify whether the activity meets the terms and conditions of nationwide permit 23, will require evaluation under standard permit procedures, or that additional conditioning of the activity is necessary to ensure that no unacceptable adverse effects will result to wetlands for projects under CE number (8). Authorization of the Coast Guard CEs does not restrict the Division or District Engineers' authorities to exercise discretionary authority, or the Corps modification, suspension, or revocation procedures. Development of local procedures to streamline coordination is encouraged where a Corps division or district further conditions the nationwide permit to require a notification for additional activities.

3. It should be noted that the Coast Guard provided a complete listing of CEs, including many that do not require Department of the Army authorization. However, to reduce confusion when referencing the CE number, we have included all Coast Guard CEs in the enclosure.

4. This guidance expires December 31, 2001 unless sooner revised or rescinded.

For the Director of Civil Works.

Daniel R. Burns, P.E.,

Chief, Operations, Construction, and Readiness Division, Directorate of Civil Works.

U.S. Coast Guard Categorical Exclusion List

The following is a consolidated list prepared from the U.S. Coast Guard **Federal Register** notices (59 FR 38654, July 29, 1994, 60 FR 32197, June 20, 1995, and 61 FR 13563, March 27, 1996). The list does not include the procedures the U.S. Coast Guard must follow to determine whether certain activities qualify for a categorical exclusion. Notification to the U.S. Army Corps of Engineers is required prior to initiation of work for activities conducted under numbers (6) (notification is only required to the Corps for projects when wetland impacts are proposed) and number (8).

1. Routine personnel, fiscal, and administrative activities, actions, procedures, and policies which clearly do not have any environmental impacts, such as military and civilian personnel recruiting, processing, paying, and record keeping.

2. Routine procurement activities and actions for goods and services, including office supplies, equipment, mobile assets, and utility services for routine administration, operation, and maintenance.

3. Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an existing approved disposal site.

4. Routine repair, renovation, and maintenance actions on aircraft and vessels.

5. Routine repair and maintenance of buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use, or an impact on a historically significant element or settings.

6. Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use, a historically significant element, or historically significant setting. (When wetland impacts are proposed, notification is required to the appropriate office of U.S. Army Corps of Engineers prior to initiation of work.)

7. Routine repair and maintenance to waterfront facilities, including mooring piles, fixed floating piers, existing piers, and unburied power cables.

8. Minor renovations and additions to waterfront facilities, including mooring piles, fixed floating piers, existing piers, and unburied power cables, which do not require special, site-specific regulatory permits. (Notification is required to the appropriate office of U.S. Army Corps of Engineers prior to initiation of work.)

9. Routine grounds maintenance and activities at units and facilities. Examples include localized pest management actions and actions to maintain improved grounds (such as landscaping, lawn care, and minor erosion control measures) that are conducted in accordance with applicable Federal, State, and local directives.

10. Installation of devices to protect human or animal life, such as raptor electrocution prevention devices, fencing to restrict wildlife movement on to airfields, and fencing and grating to prevent accidental entry to hazardous areas.

11. New construction on heavily developed portions of Coast Guard property, when construction, use, and operation will comply with regulatory requirements and constraints.

12. Decisions to decommission equipment or temporarily discontinue use of facilities or equipment. This does not preclude the need to review decommissioning under Section 106 of the National Historic Preservation Act.

13. Demolition or disposal actions that involve buildings or structures when conducted in accordance with regulations applying to removal of asbestos, PCB's, and other hazardous materials, or disposal actions mandated by Congress. In addition, if the building or structure is listed, or eligible for listing, in the National Register of Historic Places, then compliance with Section 106 of the National Historic Preservation Act is required.

14. Outleasing of historic lighthouse properties as outlined in the Programmatic Memorandum of Agreement between the Coast Guard, Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers.

15. Transfer of real property from the Coast Guard to the General Services Administration, Department of the Interior, and other Federal departments and agencies, or as mandated by Congress; and the granting of leases, permits, and easements where there is no substantial change in use of the property.

16. Renewals and minor amendments of existing real estate licenses or grants for use of government-owned real property where prior environmental review has determined that no significant environmental effects would occur.

17. New grants or renewal of existing grants of license, easements, or similar arrangements for the use of existing rights-of-way or incidental easements complementing the use of existing rights-of-way for use by vehicles; for such existing rights-of-way as electrical, telephone, and other transmission and communication lines; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and irrigation facilities; and for similar utility and transportation uses.

18. Defense preparedness training and exercises conducted on other than Coast Guard property, where the lead agency or department is not Coast Guard or Department of Transportation and the lead agency or department has completed its NEPA analysis and documentation requirements.

19. Defense preparedness training and exercise conducted on Coast Guard property that do not involve undeveloped property or increase noise levels over adjacent property and that involve a limited number of personnel, such as exercises involving primarily electric simulation or command post personnel.

20. Simulated exercises, including tactical and logistical exercises that involve small numbers of personnel.

21. Training of an administrative or classroom nature.

22. Operations to carry out maritime safety, maritime law enforcement, search and rescue, domestic ice breaking, and oil or hazardous substance removal programs.

23. Actions performed as a part of Coast Guard operations and the Aids to Navigation Program to carry out statutory authority in the area of establishment of floating and minor fixed aids to navigation, except electronic sound signals.

24. Routine movement of personnel and equipment, and the routine movement, handling, and distribution of nonhazardous materials and wastes in accordance with applicable regulations.

25. Coast Guard participation in disaster relief efforts under the guidance or leadership of another Federal agency that has taken responsibility for NEPA compliance.

26. Data gathering, information gathering, and studies that involve no physical change to the environment. Examples include topographic surveys, bird counts, wetland mapping, and other inventories.

27. Natural and cultural resource management and research activities that are in accordance with interagency agreements and which are designed to improve or upgrade the Coast Guard's ability to manage those resources.

28. Contracts for activities conducted at established laboratories and facilities, to include contractor-operated laboratories and facilities, on Coast Guard-owned property where all airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable Federal, State, and local laws and regulations.

29. Approval of recreational activities (such as Coast Guard unit picnic) which do not involve significant physical alteration of the environment, increase disturbance by humans of sensitive natural habitats, or disturbance of historic properties, and which do not occur in, or adjacent to, areas inhabited by threatened or endangered species.

30. Review of documents, such as studies, reports, and analyses, prepared for legislative proposals that did not originate in DOT and that relate to matters that are not the primary responsibility of the Coast Guard.

31. Planning and technical studies which do not contain recommendations for authorization or funding for future construction, but may recommend further study. This includes engineering efforts or environmental studies undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed and does not exclude consideration of environmental matters in the studies.

32. Bridge Administration Program actions which can be described as one of the following:

(a) Modification or replacement of an existing bridge on essentially the same alignment or location. Excluded are bridges with historic significance or bridges providing access to undeveloped barrier islands and beaches. (Approach fills regulated by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act will require a separate individual or general permit.)

(b) Construction of pipeline bridges for transporting potable water.

(c) Construction of pedestrian, bicycle, or equestrian bridges and stream gauging cableways used to transport people.

(d) Temporary replacement of a bridge immediately after a natural disaster or a catastrophic failure for reasons of public safety, health, or welfare.

(e) Promulgation of operating regulations or procedures for drawbridges.

(f) Identification of advance approval waterways under 33 CFR 115.70.

(g) Any Bridge Program action which is classified as a CE by another Department of Transportation agency acting as lead agency for such action.

34. Preparation of guidance documents that implement, without substantive change, the applicable Commandant Instruction or other Federal agency regulations, procedures, manuals, and other guidance documents.

(a) Regulations which are editorial or procedural, such as those updating addresses or establishing application procedures.

(b) Regulations concerning internal agency functions or organization or personnel administration, such as funding, establishing Captain of the Port boundaries, or delegating authority.

(c) Regulations concerning the training, qualifying, licensing, and disciplining of maritime personnel.

(d) Regulations concerning manning, documentation, admeasurement, inspection, and equipping of vessels.

(e) Regulations concerning equipment approval and carriage requirements.

(f) Regulations establishing, disestablishing, or changing the size of Special Anchorage Areas or anchorage grounds.

(g) Regulations establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones.

(h) Special local regulations issued in conjunction with a regatta or marine parade; provided that, if a permit is required, the environmental analysis conducted for the permit included an analysis of the impact of the regulations.

(I) Regulations in aid of navigation, such as those concerning rules of the road, International Regulations for the Prevention of Collisions at Sea (COLREGS), bridge-to-bridge communication, vessel traffic services, and marking of navigation systems.

35. Approvals of regatta and marine event permits for the following events:

(a) Events that are not located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, State, or local government. For example, environmentally sensitive areas may include such areas as critical habitats or migration routes for endangered or threatened species or important fish or shellfish nursery areas.

(b) Events that are located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, State, or local government and for which the Coast Guard determines, based on consultation with the Government agency, that the event will not significantly affect the environmentally sensitive area.

Regulatory Guidance Letter (RGL 96–02)

Issued: December 12, 1996, Expires: December 31, 2001.

Subject: Applicability of Exemptions under Section 404(f) to ''Deep-Ripping'' Activities in Wetlands.

1. Enclosed is a memorandum to the field jointly signed by the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers. The memorandum provides guidance clarifying when ''deep-ripping'' activities within wetlands require Department of the Army authorization.

2. This guidance expires December 31, 2001, unless sooner revives or rescinded.

For the Director of Civil Works.

Daniel R. Burns, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Department of the Army, U.S. Army Corps of Engineers, United States Environmental Protection Agency

Memorandum to the Field

December 12, 1996.

Subject: Applicability of Exemptions under Section 404(f) to ''Deep-Ripping'' Activities in Wetlands.

Purpose: The purpose of this memorandum is to clarify the applicability of exemptions provided under Section 404(f) of the Clean Water Act (CWA) to discharges associated with ''deep-ripping'' and related activities in wetlands.[1]

[1] As this guidance addresses primarily agricultural-related activities, characterizations of such practices have been developed in consultation with experts at the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service.

Background

1. Section 404(f)(1) of the CWA exempts from the permit requirement certain discharges associated with normal farming, forestry, and ranching practices in waters of the United States, including wetlands. Discharges into waters subject to the Act associated with farming, forestry, and ranching practices identified under Section 404(f)(1) do not require a permit except as provided under Section 40.4(f)(2).

2. Section 404(f)(1) does not provide a total automatic exemption for all activities related to agricultural silvicultural or ranching practices. Rather, Section 404(f)(1) exempts only those activities specifically identified in paragraphs (A) through (F), and ''other activities of essentially the same character as named'' (44 FR 34264). For example, Section 404(f)(1)(A) lists discharges of dredged or fill material from ''normal farming, silviculture and ranching activities, such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices.''

3. Section 404(f)(1)(A) is limited to activities that are part of an ''established (i.e.,

ongoing) farming, silviculture, or ranching operation.'' This ''established'' requirement is intended to reconcile the dual intent reflected in the legislative history that although Section 40.4 should not unnecessarily restrict farming, forestry, or ranching from continuing at a particular site, discharge activities which could destroy wetlands or other waters should be subject to regulation.

4. EPA and Corps regulations (40 CFR part 230 and 33 CFR part 320) and preamble define in some detail the specific ''normal'' activities fisted in Section 404(f)(1)(A). Three points may be useful in the current context:

a. As explained in the preamble to the 1979 proposed regulations, the words ''such as'' have been consistently interpreted as restricting the section ''to the activities named in the statute and other activities of essentially the same character as named,'' and ''preclude the extension of the exemption * * * to activities that are unlike those named.'' (44 FR 34264).

b. Plowing is specifically defined in the regulations not to include the redistribution of surface material in a manner which converts wetlands areas to uplands (See 40 CFR 233.35(a)(1)(iii)(D)).

c. Discharges associated with activities that establish an agricultural operation in wetlands where previously ranching had been conducted, represents a ''change in use'' within the meaning of Section 404(f)(2). Similarly, discharges that establish forestry practices in wetlands historically subject to agriculture also represent a change in use of the site (See 40 CFR 233.35(c)).

5. The statute includes a provision at Section 404(f)(2) that ''recaptures'' or reestablishes the permit requirement for those otherwise exempt discharges which:

a. Convert an area of the waters of the U.S. to a new use, and

b. Impair the flow or circulation of waters of the U.S. or reduce the reach of waters of the U.S.

Conversion of an area of waters of the U.S. to uplands triggers both provisions (a) and (b) above. Thus, at a minimum any otherwise exempt discharge that results in the conversion of waters of the U.S. to upland is recaptured under Section 404(f)(2) and requires a permit. It should be noted that in order to trigger the recapture provisions of Section 404(f)(2), the discharges themselves need not be the sole cause of the destruction of the wetland or other change in use or sole cause of the reduction or impairment of reach, flow, or circulation of waters of the U.S. Rather, the discharges need only be ''incidental to'' or ''part of'' an activity which is intended to or will forseeably bring about that result. Thus, in applying Section 404(f)(2), one must consider discharges in context, rather than isolation.

Issue

1. Questions have been raised involving ''deep-ripping'' and related activities in wetlands and whether discharges associated with these actions fall within the exemptions at Section 404(f)(1)(A). In addition, the issue has been raised whether, if such activities fall within the exemption, they would be recaptured under Section 404(f)(2).

2. ''Deep-ripping'' is defined as the mechanical manipulation of the soil to break up or pierce highly compacted, impermeable or slowly permeable subsurface soil layers, or other similar kinds of restrictive soil layers. These practices are typically used to break up these subsoil layers (e.g., impermeable soil layer, hardpan) as part of the initial preparation of the soil to establish an agricultural or silvicultural operation. Deep-ripping and related activities are also used in established farming operations to break up highly compacted soil. Although deep-ripping and related activities may be required more than once, the activity is typically not an annual practice. Deep-ripping and related activities are undertaken to improve site drainage and facilitate deep root growth, and often occur to depths greater than 16 inches and, in some cases, exceeding 4 feet below the surface. As such it requires the use of heavy equipment, including bulldozers, equipped with ripper-blades, shanks, or chisels often several feet in length. Deep-ripping and related activities involve extending the blades to appropriate depths and dragging them through the soil to break up the restrictive layer.

3. Conversely, plowing is defined in EPA and Corps regulations (40 CFR part 230 and 33 CFR part 320) as ''all forms of primary tillage * * * used * * * for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops'' (40 CFR 232.3(d)(4)). As a general matter, normal plowing activities involve the annual or at least regular, preparation of soil prior to seeding or other planting activities. According to USDA, plowing generally involves the use of a blade, chisel or series of blades, chisels, or discs, usually 8–10 inches in length pulled behind a farm vehicle to prepare the soil for the planting of annual crops or to support an ongoing farming practice. Plowing is commonly used to break up the surface of the soil to maintain soil tilth and to facilitate infiltration throughout the upper root zone.

Discussion

1. Plowing in wetlands is exempt from regulation consistent with the following circumstances:

a. It is conducted as part of an ongoing, established Agricultural, silvicultural or ranching operation; and

b. The activity is consistent with the definition of plowing in EPA and Corps regulations (40 CFR part 230 and 33 CFR part 320); and

c. The plowing is not incidental to an activity that results in the immediate or gradual conversion of wetlands to non-waters.

2. Deep-ripping and related activities are distinguishable from plowing and similar practices (e.g., discing, harrowing) with regard to the purposes and circumstances under which it is conducted, the nature of the equipment that is used, and its effect, including in particular the impacts to the hydrology of the site.

a. Deep-ripping and related activities are commonly conducted to depths exceeding 16 inches, and as deep as 6–8 feet below the soil surface to break restrictive soil layers and improve water drainage at sites that have not supported deeper rooting crops. Plowing depths, according to USDA, rarely exceed one foot into the soil and not deeper than 16 inches without the use of special equipment involving special circumstances. As such, deep-ripping and related activities typically involve the use of special equipment, including heavy mechanized equipment and bulldozers, equipped with elongated ripping blades, shanks, or chisels often several feet in length. Moreover, while plowing is generally associated with ongoing operations, deep-ripping and related activities are typically conducted to prepare a site for establishing crops not previously planted at the site. Although deep-ripping may have to be redone at regular intervals in some circumstances to maintain proper soil drainage, the activity is typically not an annual or routine practice.

b. Frequently, deep-ripping and related activities are conducted as a preliminary step for converting a ''natural'' system or for preparing rangeland for a new use such as farming or silviculture. In those instances, deep ripping and related activities are often required to break up naturally-occurring impermeable or slowly permeable subsurface soil layers to facilitate proper root growth. For example, for certain depressional wetlands types such as vernal pools, the silica-cemented hardpan (durapan) or other restrictive layer traps precipitation and seasonal runoff creating ponding and saturation conditions at the soil surface. The presence of these impermeable or slowly permeable subsoil layers is essential to support the hydrology of the system. Once these layers are disturbed by activities such as deep-ripping, the hydrology of the system is disturbed and the wetland is often destroyed.

c. In contrast, there are other circumstances where activities such as deep-ripping and related activities are a standard practice of an established on-going farming operation. For example, in parts of the Southeast, where there are deep soils having a high clay content, mechanized farming practices can lead to the compaction of the soil below the sod surface. It may be necessary to break up, on a regular although not annual basis, these restrictive layers in order to allow for normal root development and infiltration. Such activities may require special equipment and can sometimes occur to depths greater than 16 inches. However, because of particular physical conditions, including the presence of a water table at or near the surface for part of the growing season, the activity typically does not have the effect of impairing the hydrology of the system or otherwise altering the wetland characteristics of the site.

Conclusion

1. When deep-ripping and related activities are undertaken as part of an established ongoing agricultural silvicultural or ranching operation, to break up compacted soil layers and where the hydrology of the site will not be altered such that it would result in conversion of waters of the U.S. to upland, such activities are exempt under Section 404(f)(1)(A).

2. Deep-ripping and related activities in wetlands are not part of a normal ongoing

activity, and therefore not exempt, when such practices are conducted in association with efforts to establish for the first time (or when a previously established operation was abandoned) an agricultural silvicultural or ranching operation. In addition, deep-ripping and related activities are not exempt in circumstances where such practices would trigger the ''recapture'' provision of Section 404(f)(2):

(a) Deep-ripping to establish a farming operation at a site where a ranching or forestry operation was in place is a change in use of such a site. Deep-ripping and related activities that also have the effect of altering or removing the wetland hydrology of the site would trigger Section 404(f)(2) and such ripping would require a permit.

(b) Deep-ripping a site that has the effect of converting wetlands to non-waters would also trigger Section 404(f)(2) and such ripping would require a permit.

3. It is the agencies' experience that certain wetland types are particularly vulnerable to hydrological alteration as a result of deep-ripping and related activities. Depressional wetland systems such as prairie potholes, vernal pools and playas whose hydrology is critically dependent upon the presence of an impermeable or slowly permeable subsoil layer are particularly sensitive to disturbance or alteration of this subsoil layer. Based upon this experience, the agencies have concluded that, as a general matter, deep-ripping and similar practices, consistent with the descriptions above, conducted in prairie potholes, vernal pools, playas, and similar depressions wetlands destroy the hydrological integrity of these wetlands. In these circumstances, deep-ripping in prairie potholes, vernal pools, and playas is recaptured under Section 404(f)(2) and requires a permit under the Clean Water Act.

Robert H. Wayland III,

Director, Office of Wetlands, and Watersheds, U.S. Envionmental Protection Agency.

Daniel R. Burns, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works, U.S. Army Corps of Engineers.

[FR Doc. 99–6892 Filed 3–19–99; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 21, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat—Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 16, 1999.

Joseph Schubart,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Upward Bound, Upward Bound Math/Science, and Veterans Upward Bound Programs Annual Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 810.

Burden Hours: 4,680.

Abstract: Upward Bound grantees must annually submit this report so the Department can evaluate the performance of grantees prior to awarding continuation grants and to assess a grantee's prior experience at the end of each budget period. The Department will also aggregate the data to provide descriptive information impact.

This performance report replaces the EDGAR based collection the Department has been receiving.

Office of the Under Secretary

Type of Review: New.

Title: Study of State Agency Activities Under Title I, Part D of Elementary and Secondary Education Act, as Amended.

Frequency: One-time only.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 100.

Abstract: ED requires nationally representative information on the Title I, Part D, Subpart 1 program, as reauthorized by the Improving America's Schools Act of 1994, to develop a descriptive profile useful in ongoing program improvement efforts and in updating performance indicators for the program in compliance with the Government Performance and Results Act of 1993. ED will collect data from the universe of state agencies with administrative responsibility for the program through a mail survey. Respondent agencies will include State Educational Agencies, Departments of Corrections, Youth Services Agencies, Correctional School Districts, and other state agencies.

[FR Doc. 99–6844 Filed 3–19–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Teacher Quality Enhancement Grants for States and Partnerships Program

AGENCY: Office of Postsecondary Education; Department of Education.

ACTION: Notice inviting individuals to serve as field readers.

SUMMARY: The Office of Higher Education Programs invites interested individuals to apply to serve as field readers evaluating grant applications submitted for funding in fiscal year 1999 for the Teacher Quality Enhancement Grants for States and Partnerships Program. This program includes three new competitive grant programs that, together, are intended to improve teacher quality in America by effectively addressing the Nation's need to recruit and prepare teachers who have the skills and content knowledge needed to teach all children to high academic standards. The three programs include—State Grants to support the implementation of comprehensive statewide reforms to improve teacher quality, Partnership Grants to bring about fundamental change and improvement in traditional teacher education programs, and Teacher Recruitment Grants to reduce shortages of qualified teachers in high-need school districts.

DATES: Any individual interested in serving as a field reader should mail or fax two copies of his or her resume to the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than April 2, 1999, indicating the program in which he or she is interested in serving as a field reader. Résumés should not exceed two pages.

Duties and Compensation of Field Readers: Field readers will review applications according to the applicable published selection criteria. Each field reader will serve for a period of approximately five days. Each field reader who is selected will receive compensation for certain travel expenses and an honorarium.

Field Reader Qualifications: The Department is seeking experienced and knowledgeable professionals who collectively can review program applications from a variety of perspectives on what is needed to successfully prepare highly competent K–12 teachers. In this regard, the Department seeks the help of interested professionals with expertise in one or more of the following areas:

- State reforms in K–12 education, and teacher licensing, certification, and testing of teachers.
- The accreditation of teacher preparation programs, and how these programs can provide prospective teachers with both strong teaching skills and academic content in the areas in which they will teach.
- The teaching needs of K–12 school districts, and particularly those with schools in high-poverty areas or that face large teacher shortages.
- The support that new teachers need in their first few years of teaching.
- Activities that can foster strong working relationships between teacher preparation programs and the school districts and schools in which teaching graduates will teach.
- The particular teaching needs of high-need school districts.
- Management and governance issues related to the development and sustainability of partnerships among teacher preparation programs, schools of arts and sciences, and high-need school districts.
- Other issues related to teacher licensure, certification, preparation, and recruitment that must be addressed if new teachers are to be able to enable all of their students to achieve high academic standards.

Prospective field readers may come from State agencies, institutions of higher education, local K–12 school districts, private organizations, community service agencies, and other entities. Each field reader must have the expertise necessary to assess accurately the quality of a program application on the basis of the applicable selection criteria. Application packages for prospective applicants that include the program selection criteria may be accessed at the following Internet site: http://www.ed.gov/offices/OPE/heatqp/index.html.

FOR FURTHER INFORMATION CONTACT: Dr. Louis Venuto, Teacher Quality Enhancement Program, Post Office Box 23764, Washington, D.C. 20026–3764. Telephone: (202) 708–8847. Inquiries may be sent by e-mail to Louis__Venuto@ed.gov or by fax to (202) 708–9272. 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.

Individuals with disabilities may obtain this document in an alternative 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:

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1021 *et seq.*

Dated: March 17, 1999.

Maureen A. McLaughlin,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 99–6935 Filed 3–19–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, April 7, 1999, 6:00 p.m.–9:30 p.m.

ADDRESSES: Garden Plaza, 215 S. Illinois Avenue, Oak Ridge, TN 37830.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Federal Coordinator/Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, (423) 576–0314.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: A presentation entitled ''Real Estate Land Actions at Oak Ridge Operations'' will be given by Ms. Katy Kates, DOE Oak Ridge Operations Realty Officer.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Marianne Heiskell at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Marianne Heiskell, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (423) 576–0314.

Issued at Washington, DC on March 16, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–6912 Filed 3–19–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, April 28, 1999:

3:00 p.m.–5:00 p.m. (Monitoring and Surveillance Workshop)

6:00 p.m.–9:00 p.m. (Board Meeting)

6:30 p.m. to 7:00 p.m. (Public Comment Session)

ADDRESSES: Plaza Hotel, 230 Plaza, Las Vegas, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Northern New Mexico Citizens' Advisory Board, Los Alamos National Laboratory, 528 35th Street, Los Alamos, New Mexico 87544, (505) 665–5048.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Public comment (6:30–7:00 p.m.).

2. Special report on the canyons in Los Alamos county.

3. Committee reports.

4. Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. The public may file written statements with the Committee, either before or after the meeting. A sign-up sheet will also be available at the door of the meeting room to indicate a request to address the Board. Individuals who wish to make oral presentations, other than during the public comment period, should contact Ms. Ann DuBois at (505) 665–5048 five (5) business days prior to the meeting to request that the Board consider the item for inclusion at this or a future meeting. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Ms. M.J. Byrne, Deputy Designated Federal Officer, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on March 16, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–6913 Filed 3–19–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–151–007]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 15, 1999.

Take notice that on March 10, 1999, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with an effective date of November 1, 1997:

Second Revised Sheet No. 17
Third Revised Sheet No. 23
Third Revised Sheet No. 28
Second Revised Sheet No. 34
Second Revised Sheet No. 39
Third Revised Sheet No. 80
Fourth Revised Sheet No. 81
Fourth Revised Sheet No. 97
First Revised Sheet No. 107
First Revised Sheet No. 108
Second Revised Sheet No. 143
Second Revised Sheet No. 145
Third Revised Sheet No. 154
Fourth Revised Sheet No. 155
Second Revised Sheet No. 157
First Revised Sheet No. 158
First Revised Sheet No. 159
First Revised Sheet No. 160

Mid Louisiana states that the purpose of this filing is to tender, formally for filing, those sheets which were submitted and approved in Docket No. RP97–151–002 as ''PRO FORMA'' sheets by Commission letter order dated July 15, 1997. Mid Louisiana's compliance filing, filed October 27, 1997 in docket number RP97–151–006 re-submitted only those sheets requiring revisions from the original submission. Mid Louisiana misinterpreted the July 15, 1997 order and therefore did not re-file the above referenced sheets sans the ''pro-forma'' designation. This filing is made for record-keeping and pagination purposes, only and has no practical effect on the stated content, policies or procedures set forth in Mid Louisiana's tariff since Mid Louisiana has been operating under the approved provisions of the RP97–151–002 order and its Pro-Forma provisions since November 1, 1997.

Pursuant to section 154.7(a)(7) of the Commission's Regulations, Mid Louisiana respectively requests waiver of Section 154.207, Notice Requirements and any other requirement of the Regulations in order to permit the tendered tariff sheet to become retroactively effective November 1, 1997, as submitted.

Any person desiring to protest this filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–6838 Filed 3–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP99–163–000, CP99–165–000 and CP99–166–000]

Questar Southern Trails Pipeline Company; Notice of Application

March 16, 1999.

Take notice that on January 19, 1999, as amended on March 5, 1999, Questar Southern Trails Pipeline Company (Southern Trails), 180 East 100 South, Salt Lake City, Utah 84111, filed in Docket No. CP99–163–000, an application pursuant to 18 CFR Part 157, Subpart E-Optional Certificate and Abandonment Procedures for New Service Under Section 7(c) of the Natural Gas Act requesting certificate authority to (1) acquire 693 miles of 12-inch, 16-inch, and 22-inch diameter crude-oil pipeline and related facilities, located in New Mexico, Utah, Arizona and California, from Questar Line 90 Company (Line 90 Company), a Questar Pipeline Company (Questar) subsidiary, (2) convert and operate the acquired facilities to provide natural-gas transportation service and (3) construct and operate (a) seven compressor stations and (b) eight miles of pipeline replacements, 10 miles of pipeline realignments and 58 miles of pipeline extensions to provide new, open-access transportation of natural gas through the acquired facilities, as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http:///www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Southern Trails also requests a preliminary determination on non-environmental issues in Docket No. CP99–163–000. Further, in Docket No. CP99–165–000, Southern Trails seeks a blanket certificate pursuant to Subpart G of Part 284 of the Commission's Regulations in order to provide open access transportation of natural gas for others. Finally, in Docket No. CP99–166–000, Southern Trails requests a blanket certificate pursuant to Subpart F of Part 157 of the Commission's Regulations in order to perform certain routine activities and operations.

In accordance with the Optional Certificate regulations, Southern Trails states that (a) it is an ''eligible applicant'', as defined in 18 CFR Section 157.101(b)(1); (b) it proposes to provide ''new service'', as defined in 18 CFR Section 157.101(2); and (c) all facilities proposed to be acquired and constructed will be used solely to provide new service pursuant to 18 CFR Section 157.101(3). Additionally, Southern Trails agrees to comply with all the terms and conditions specified in 18 CFR Section 157.103 and represents that all required exhibits, including an environmental report (Exhibit Z–2-Environmental Data), comprising 12 Resource Reports addressing the issues appearing in 18 CFR Part 380, as well as a complete Pro Forma Tariff (Exhibit P, Tariff) are included in the application. Furthermore, Southern Trails explains that, it has requested issuance of a blanket transportation certificate under 18 CFR Section 284.221. Further, Southern Trails states that is has served a copy of its application on local distribution companies in whose service territory Southern Trails will be located and the local distribution companies' appropriate state regulatory agencies.

Southern Trails states that on October 23, 1998, Line 90 Company and ARCO Pipe Line Company (ARCO) signed an asset-purchase agreement transferring ownership of certain crude-oil facilities, namely ARCO's Lines 90, 91, and 92 and associated equipment. The acquired facilities, it is stated, extend from the Four Corners region of Utah and New Mexico to Long Beach, California. It is explained that Line 90 (592 miles of 16-inch diameter pipeline), Line 91 (18 miles of 16-inch diameter pipeline), Line 91 (80 miles of 12-inch and three miles of 22-inch diameter pipeline), 12 pump-station sites, on oil metering delivery site, two area offices, vehicles and related facilities and properties were sold to Line 90 Company for $38,000,000.

Southern Trails explains that not all of the crude-oil facilities acquired from ARCO are useful to transport natural gas. Southern Trails explains that Line 90 Company intends to salvage or otherwise dispose of certain oil-related facilities, not useful for natural-gas service, to outside parties. (These facilities may include oil storage tanks, spare parts and other facilities or equipment that are not integrated with the main lines to be converted to natural gas service.) Southern Trails states that any net proceeds from this activity will reduce the acquisition cost to Southern Trails and the rates for prospective customers.

In the instant application, Southern Trails states that it seeks approval to acquire certain portions of the above-described crude-oil pipeline facilities from Line 90 Company and convert and operate those pipeline facilities to provide natural gas service. Southern Trails further states that it also seeks authorization to install (a) approximately eight miles of 16-inch diameter pipeline replacements, (b) approximately 10 miles of 16-inch diameter pipeline realignments, (c) approximately 58 miles of 22-inch and 20-inch diameter pipeline extensions, (d) seven new compressor stations totaling 18,356 brake horsepower of reciprocating compression, with all but one station being installed at existing pump-station sites, (e) one potential gas-plant receipt point to receive natural gas from El Paso Field Services' Chaco Plant in San Juan County, New Mexico, (f) six potential interstate pipeline interconnects, two each with El Paso Natural Gas at Blanco, New Mexico, and Topock, Arizona, and Transwestern Pipeline Company at Blanco and north of Needles, California, and one each with TransColorado Gas Transmission Company at Blanco and Mojave Pipeline Company at Topock, Arizona (g) three potential local distribution company interconnects, one each with Southwest Gas near Southern Trails' proposed Mojave Valley Compressor Station and Pacific Gas & Electric Company and Southern California Gas Company at Topock, (h) five anticipated end-use delivery points, one to ARCO's Long Beach, California, Refinery Complex and four to the Navajo Tribal Utility Authority and (i) approximately 50 block valves and related ancilliary facilities. It is stated that the total estimated cost of the project is approximately $155,000,000.

Southern Trails explains that as a result of its acquiring 693 miles of existing crude-oil pipeline and related equipment, it will be able to operate a 751-mile pipeline with pipeline replacement, realignment and extension activities that only involve

approximately 75.4 miles of new pipeline construction or about 10% of the pipeline's overall 751-mile length. Moreover, it is stated, six of the seven new compressor stations will be installed at existing pump-station sites. Nevertheless, Southern Trails states that it has embarked on the process of retaining a third-party contractor to prepare an Environmental Impact Statement/Environmental Impact Report for the project to meet both National Environmental Policy Act and California Environmental Quality Act requirements, with the FERC acting as lead agency for environmental review.

Southern Trails states that, between September 8 and October 8, 1998, it held an open season to determine the demand for Southern Trails' capacity. It explains that, during this open season, 15 companies submitted 22 bids totaling 810,000 Dth per day of demand. After review of the bids, Southern Trails explains that it is finalizing service agreements with certain parties for all or most of the capacity of the pipeline system.

Southern Trails seeks authority to provide open-access transportation service in accordance with tariff sheets that are submitted with its application. Southern Trails states that the proposed tariff includes (1) Rate Schedules FT (firm transportation service) and IT (interruptible transportation service) for both the East (Blanco/Chaco to Topock) and West (Topock to Long Beach) Zones; (2) General Terms and Conditions that delineate the specific operating procedures to be followed by Southern Trails and its customers: (3) maximum and minimum zone rates based on the Commission's straight fixed-variable rate design and a provision for negotiated rates consistent with the Commission's recourse-rate policy; and (4) forms of service agreements applicable to service provided under these rate schedules. Southern Trails specifies that the maximum $11.46084 reservation rates, $0.00967 usage rates and $0.38647 interruptible rates are proposed to apply to transportation service provided by Southern Trails in the East and West Zones.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before April 6, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that granting the certificates is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern Trails to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–6839 Filed 3–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–102–000]

Wyoming Interstate Company, Ltd.; Notice of Site Visit

March 16, 1999.

On April 7 and 8, 1999, the Office of Pipeline Regulation (OPR) staff will conduct an inspection of the pipeline route proposed by Wyoming Interstate Company, Ltd. (WIC) for the Medicine Bow Lateral Project. The inspection will begin from at the southern terminus of the project on the morning of April 7, 1999, and proceed northward along the proposed pipeline route through Weld County, Colorado and Laramie and Platte Counties, Wyoming. On April 8, 1999, the inspection will begin near Wheatland, Wyoming, at about 9:00 a.m., and continue northward along the proposed pipeline route in Platte and Converse Counties, Wyoming. Representatives of WIC will accompany the OPR staff.

All parties may attend. Anyone interested in participating in the site visit must provide their own transportation.

For further information, please contact Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

David P. Boergers,

Secretary.

[FR Doc. 99–6840 Filed 3–19–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51924; FRL–6068–9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from February 1, to February 12, 1999.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51924]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51924]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION'' of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51924]'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 3 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; TME's received; and (III) Notices of Commencement to manufacture/import.

I. 36 Premanufacture Notices Received From: 02/01/99 to 02/12/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0445	02/01/99	05/02/99	Shin-etsu Silicones of America, Inc	(S) Ingredient for emulsified silicone resin coating agent	(S) 2,5-furandione, reaction products with et. alc. and 3-(triethoxysilyl)-1-propanamine*
P–99–0446	02/02/99	05/03/99	CBI	(G) Raw material used in the formulation of uv industrial coatings for wood and plastics	(G) Polyester urethane vinyl ether
P–99–0447	02/02/99	05/03/99	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Substituted heterocyclic benzoic acid
P–99–0448	02/02/99	05/03/99	Nichiha USA, Inc	(S) Sealant for exterior walls and sizing boards	(G) Isocyanate-terminated urethane prepolymer
P–99–0449	02/02/99	05/03/99	Nichiha USA, Inc	(G) Primer for construction sealant	(G) Isocyanate modified polymer
P–99–0451	02/02/99	05/03/99	CIBA Specialty Chemicals Corporation / Colors Division	(S) Reactive dye for cellulose; scarlet and black	(G) Naphthalenesulfonic acid, -amino-hydroxy-, coupled with diazotized 2-[(aminophenyl)sulfonyl]ethyl hydrogen sulfate and diazotized amino-[[2-(sulfoox-y)ethyl]sulfonyl]benzenesulfonic acid, potassium sodium salts
P–99–0452	02/02/99	05/04/99	Eastman Kodak Company	(G) Contained use in an article	(G) Heterocyclic substituted heterocyclic benzoic acid salt
P–99–0453	02/04/99	05/05/99	CBI	(G) Building materials coating resin	(G) Amino-formaldehyde-polyol polymer
P–99–0454	02/03/99	05/04/99	PFW Aroma Chemicals USA	(S) Fragrance oil in detergent, fabric softener and household cleaners; fragrances oil in soaps, hair care, bath and shower and personal care; fragrance oil in fine perfumes; fragrance oil in air fresheners, candles, potpourri	(S) Benzene, [2-(cyclopentyloxy)ethyl]-*
P–99–0455	02/04/99	05/05/99	Vianova Resins Incorporated	(G) Paint additive	(G) Water soluble alkyd resin
P–99–0456	02/03/99	05/04/99	Percy International Ltd.	(S) Catalyst for moisture-curing, polyurethane membranes	(S) Carbamic acid, 1,6-hexanediylbis-, bis[2-[2-(1-ethylpentyl)-3-oxazolidinyl] ethyl] ester*
P–99–0457	02/05/99	05/06/99	CBI	(G) Coating component	(G) Polymer of styrene and mixed acrylates
P–99–0458	02/03/99	05/04/99	CBI	(S) Resin for coatings	(G) Hydrocarbon resin
P–99–0459	02/05/99	05/06/99	Percy International Ltd.	(S) Moisture-curing sealant	(S) Oxirane, methyl-, polymer with alpha-hydro-omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 1,1′-methylenebis[4-isocyanatobenzene] and oxirane*
P–99–0460	02/05/99	05/06/99	CBI	(G) Plasticizer	(G) Phtalic anhydride, polymer with diethyleneglycol aliphatic alcohol ester
P–99–0461	02/09/99	05/10/99	Dow Corning Corporation	(S) Water repellent for masonary	(S) Silicic acid, sodium salt, reaction products with clorotrimethylsilane, iso-pr alc. and triethoxyoctylsilane*
P–99–0462	02/10/99	05/11/99	CBI	(S) Polyester polyol resin; poly urethane	(G) Diethyl pentandiol
P–99–0463	02/08/99	05/09/99	Hercules Incorporated	(G) Papermaking additive	(G) Glyoxalated amphoteric polyacrylamide
P–99–0464	02/08/99	05/09/99	CBI	(G) Open, non-dispersive use	(G) Polyester-polyamide block copolymer
P–99–0466	02/08/99	05/09/99	CBI	(G) Open, non-dispersive use	(G) Polyester-polyamide block copolymer
P–99–0467	02/08/99	05/09/99	Henkel Corporation	(G) Active energy curable compounds	(G) Acrylated epoxy monomer
P–99–0468	02/08/99	05/09/99	CBI	(G) Cleaning agent	(G) Fatty alcohol alkoxylate
P–99–0469	02/10/99	05/11/99	KOSA	(S) Reactant in manufacture of rigid polyurethane foam	(G) Aromatic polyester polyol
P–99–0470	02/09/99	05/10/99	CBI	(G) Open, non-dispersive use	(G) Substituted sulfonaphthalenylazo substituted phenylazo substituted phenyl, salt
P–99–0471	02/10/99	05/11/99	The Dow Chemical Company	(S) Injection molded automotive exterior trim	(S) Hexanedioic acid, polymer with 1,4-butanediol, 1,1′-methylenebis [isocyanatobenzene], methyloxirane and oxirane, 2-(2-butoxyethoxy)ethyl ester*

I. 36 Premanufacture Notices Received From: 02/01/99 to 02/12/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0472	02/11/99	05/12/99	CBI	(S) Intermediate for detergent fuel additive	(G) Polyalkenylalkylphenol
P–99–0473	02/11/99	05/12/99	CBI	(G) Open, non-dispersive (reaction aid)	(G) Styrene divinylbenzene copolymer
P–99–0474	02/11/99	05/12/99	CBI	(G) Open, non-dispersive use	(G) Styrene-acrylic polymer
P–99–0479	02/12/99	05/13/99	CBI	(S) Leather dyeing	(G) Polysubstituted bis phenylazonapthalene disulfonic acid
P–99–0480	02/12/99	05/13/99	CBI	(G) Printing resin	(G) Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 1,3-bis (1-isocyanato-1-methylethyl) benzene, diamine, alpha-hydro-omega-hydroxypoly (oxy-1,4-butanediyl) and 2-methyl-1,3-propanediol, ammonium salt, polyethylene-polypropylene glycol 2-aminopropyl me ether blocked*
P–99–0481	02/12/99	05/13/99	CBI	(G) Extractant modifier	(G) Mixed diester
P–99–0482	02/12/99	05/13/99	CBI	(G) Process aid	(G) Organomettalic intermediate
P–99–0484	02/12/99	05/13/99	H. B. Fuller Company	(S) Bottle label adhesive	(G) Polyacrylate polymer, potassium salt
P–99–0485	02/12/99	05/13/99	H. B. Fuller Company	(S) Bottle label adhesive	(G) Polyacrylate, sodium salt
P–99–0486	02/12/99	05/13/99	H. B. Fuller Company	(S) Bottle label adhesive	(G) Polyacrylate, lithium salt
P–99–0487	02/12/99	05/13/99	H. B. Fuller Company	(S) Bottle label adhesive	(G) Polyacrylate, triethanolamine salt

II. 1 Test Marketing Exemption Notices Received From: 02/01/99 to 02/12/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–99–0001	02/02/99	03/19/99	Reichhold, Inc.	(S) See attached test marketing plan	(G) Acrylic modified polyurethane polymer

III. 8 Notices of Commencement Received From: 02/01/99 to 02/12/99

Case No.	Received Date	Commencement/Import Date	Chemical
P–91–0074	02/02/99	01/22/99	(G) Propenoate-terminated alkyl substituted silyl ester
P–98–0318	02/03/99	01/21/99	(G) Substituted cyclic olifin
P–98–0469	02/02/99	01/07/99	(S) Poly[oxy(methyl-1,2-ethanediyl)],.alpha.-[2-(trimethylammonio)ethyl]-.omega.-hydroxy-, chloride*
P–98–0537	02/02/99	01/26/99	(G) Substituted naphthalene disulfonic acid
P–98–0608	02/01/99	01/12/99	(G) Derivatized tetrasubstituted alkane
P–98–1024	02/02/99	01/12/99	(G) Acrylic copolymer
P–98–1064	02/03/99	01/15/99	(G) Modified polyurethane
P–99–0071	02/02/99	01/25/99	(G) Polyamide

Environmental protection, Premanufacture notices.

Dated: March 9, 1999.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–6898 Filed 3–19–99; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at Dallas Renaissance in Dallas, Texas, on March 23, 1999, from 2:00 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Vivian L. Portis, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Dallas Renaissance, 2222 Stemmons Freeway, Dallas, Texas 75207.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board

meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes
—February 2, 1998 (Open and Closed)
B. New Business
—Regulation
—Compensation of Board Members [12 CFR Parts 611 and 620] (Final)

Dated: March 17, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–6974 Filed 3–17–99; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

March 10, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 21, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0856.

Title: Universal Service—School and Libraries Universal Service Program Reimbursement Forms.

Form Number(s): FCC 472, FCC 473, and FCC 474.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 61,800.

Estimated Time per Response: 1.0 to 1.5 hours.

Frequency of Response: Recordkeeping. Annually and on occasion reporting requirements. Third party disclosure.

Total Annual Burden: 88,050 hours.

Total Annual Costs: None.

Needs and Uses: The Commission adopted rules providing for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. The Telecommunications Act of 1996 comtemplates that discounts on eligible services shall be provided to schools and libraries, and that service providers shall seek reimbursement for the amount of the discounts. FCC Forms 473 and 474 facilitate the reimbursement process. FCC Form 472 allows providers to confirm that they are actually providing the discounted services to eligible entities.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 99–6833 Filed 3–19–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

March 18, 1999.

Deletion of Agenda Item From March 18th Open Meeting

The following item has been deleted from the list of agenda items scheduled for consideration at the March 18, 1999, Open Meeting and previously listed in the Commission's Notice of March 11, 1999. This item was adopted by circulation.

ITEM NO: 3.

BUREAU: Common Carrier.

SUBJECT:

Title: Federal-State Joint Board on Universal Service (CC Docket No. 96–45).

Summary: The Commission will consider action concerning: (1) the limited exemption from competitive bidding for the 1998–99 funding year in the schools and libraries and rural health care universal service support mechanisms; and (2) the period during which schools and libraries may apply discounts for nonrecurring services.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–7039 Filed 3–18–99; 12:10 pm]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2321]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

March 15, 1999.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by April 6, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5–38.5 GHz, 40.5–41.5 GHz, and 48.2–50.2 GHz Frequency Bands; Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in the 40.5–42.5 GHz Frequency Band; Allocation of Spectrum in the 46.9–47.0 GHz Frequency Band For Wireless Services; and Allocation of Spectrum in the 37.0–38.0 GHz and 40.0–40.5 GHz for Government Operations (IB Docket No. 97–95, RM–8811).

Number of Petitions Filed: 3.

Subject: Federal-State Joint Board on Universal Service (CC Docket No. 96–45).

Number of Petitions Filed: 2.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 99–6835 Filed 3–19–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1267–DR]

(California); Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California, (FEMA–1267–DR), dated February 9, 1999, and related determinations.

EFFECTIVE DATE: February 24, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of California is hereby amended to include the Mortgage and Rental Assistance program under Section 408(b) of the Stafford Act in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1999:

Mortgage and Rental Assistance program under Section 408(b) of the Stafford Act for the counties of Fresno, Kern, Kings, Madera, Monterey, and Tulare (already designated for Disaster Unemployment Assistance).

Mortgage and Rental Assistance program under Section 408(b) of the Stafford Act and Disaster Unemployment Assistance for Merced County.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program).

James L. Witt,

Director.

[FR Doc. 99–6886 Filed 3–19–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3134–EM]

Illinois; Amendment No. 5 to Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Illinois, (FEMA–3134–EM), dated January 8, 1999, and related determinations.

EFFECTIVE DATE: February 26, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Illinois, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of January 8, 1999:

Christian County for reimbursement for emergency protective measures, Category B, under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program).

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–6888 Filed 3–19–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3137–EM]

Michigan; Amendment No. 4 to Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Michigan, (FEMA–3137-EM), dated January 27, 1999, and related determinations.

EFFECTIVE DATE: March 10, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Michigan, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of January 27, 1999:

Monroe County for reimbursement for emergency protective measures under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–6890 Filed 3–19–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3136–EM]

New York; Amendment No. 4 to the Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of New York, (FEMA–3136–EM), dated January 15, 1999, and related determinations.

EFFECTIVE DATE: March 8, 1999

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of New York, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of January 15, 1999:

St. Lawrence County for reimbursement for emergency protective measures under the

Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–6889 Filed 3–19–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1268–DR]

Wyoming; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wyoming (FEMA–1268–DR), dated February 17, 1999, and related determinations.

EFFECTIVE DATE: February 17, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 17, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Wyoming, resulting from a severe winter storm on October 5–9, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Wyoming.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Steve L. Olsen of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Wyoming to have been affected adversely by this declared major disaster:

Niobrara County for Public Assistance.

All counties within the State of Wyoming are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99–6887 Filed 3–19–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–009548–051

Title: United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference

Parties:

Farrell Lines, Inc.

Waterman Steamship Corporation

Synopsis: The proposed amendment would reduce the notice period required to take independent action from 10 days to 72 hours. It would also permit the parties to enter into individual service contracts and adopt voluntary guidelines with respect to individual service contracts.

Agreement No.: 202–010714–028

Title: Trans-Atlantic American Flag Liner Operators

Parties:

American President Lines Ltd.

Lykes Lines Limited, LLC

Sea-Land Service, Inc.

Synopsis: The proposed amendment would revise the Agreement's tariff, independent action, and service contract provisions, as well as other miscellaneous provisions to conform to the requirements of the Ocean Shipping Reform Act of 1998. It also deletes authorities related to European inland transport services.

Dated: March 17, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–6881 Filed 3–19–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 5, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Alton Brooks Mitchell, II, Bowling Green, Kentucky; Steven Barnard Catron, Bowling Green, Kentucky; John Ben Holland, Bowling Green, Kentucky; Lester Key, Franklin, Kentucky; C. Peter Mahurin, Bowling Green, Kentucky; E. Suzanne Vitale, Bowling Green,

Kentucky (a group acting in concert) to acquire an aggregate 50 percent of the voting shares on a pro forma basis of Ohio County Bancshares, Inc., Beaver Dam, Kentucky, and thereby indirectly acquire Beaver Dam Deposit Bank, Beaver Dam, Kentucky.

Board of Governors of the Federal Reserve System, March 16, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–6826 Filed 3–19–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 16, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. New Commerce BanCorp, Greenville, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of New Commerce Bank, N.A., Simpsonville, South Carolina (in organization).

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Rich Land Bancorp, Inc., Olney, Illinois; to acquire 100 percent of the voting shares of Cisne State Bank, Cisne, Illinois.

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Ideal Bancshares, Inc., West Fargo, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Goodrich, Goodrich, North Dakota.

Board of Governors of the Federal Reserve System, March 16, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–6827 Filed 3–19–99; 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 April 5, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. BankBoston Corporation, Boston, Massachusetts; The Bank of New York Company, Inc., New York, New York; The Chase Manhattan Corporation, New York, New York; Comerica Incorporated, Detroit, Michigan; First Union Corporation, Charlotte, North Carolina; Fleet Financial Group, Inc., Boston, Massachusetts; HSBC Holdings plc, London, England; HSBC Holdings BV, Amsterdam, Netherlands; HSBC Americas, Inc., Buffalo, New York; The Royal Bank of Scotland Group, plc, Edinburgh, United Kingdom; The Royal Bank of Scotland plc, Edinburgh, United Kingdom; Citizens Financial Group, Inc., Providence, Rhode Island; and Summit Bancorp, Princeton, New Jersey; to acquire for NYCE Corporation, Woodcliff Lake, New Jersey (NYCE), all the stock of Magic Line, Inc., Dearborn, Michigan, and the subsequent merger of Magic Line, Inc., with and into NYCE Midwest, Inc., a wholly-owned subsidiary of NYCE, and thereby engage in the following data processing and check verification activities including network services, EFT processing, and remote branching services, pursuant to §§ 225.28(b)(14) and (b)(2)(iii) of Regulation Y. See also, *The Bank of New York Company, Inc*, 80 Fed. Res. Bull. 1107 (1994); *Banc One Corporation*, 81 Fed. Res. Bull. 491 (1995); and *Barnett Banks, Inc*, 83 Fed. Res. Bull. 131 (1996).

Board of Governors of the Federal Reserve System, March 16, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–6825 Filed 3–19–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

[Docket No. R–1035]

Policy Statement on Payments System Risk; Modification to the Procedures for Measuring Daylight Overdrafts for Net Settlement Entries Processed Through the Enhanced Settlement Service

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board has modified the daylight overdraft posting rules to include the posting time for settlement entries processed through the enhanced settlement service. Also, the footnote numbering scheme will be changed to eliminate the duplication of footnote reference numbers and allow for continuous footnote numbering.

EFFECTIVE DATE: March 29, 1999.

FOR FURTHER INFORMATION CONTACT: Myriam Payne, Manager (202/452–

3219), or Stacy Panigay, Financial Services Analyst (202/452–2934), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired only: Telecommunications Device for the Deaf (TDD), Diane Jenkins (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

When the Board modified the Payments System Risk Reduction policies in 1992 (57 FR 47093, October 14, 1992), it adopted a set of posting rules which comprise a schedule for the intraday timing of debits and credits to institutions Federal Reserve accounts for different types of payments. The implementation of these rules along with the imposition of fees for daylight overdrafts were part of the Board's program to induce behavioral changes to control risk and increase efficiency in the payments system. In accordance with the posting rules adopted in 1992, net settlement entries currently are posted throughout the business day after the settlement entries are received by the Reserve Banks.

Analysis of Federal Reserve Net Settlement Services

Currently the Federal Reserve offers two types of net settlement services, the settlement sheet service and the Fedwire-based service. In the traditional settlement sheet service, the settlement entries are posted throughout the business day on the next clock hour approximately one hour after settlement data are received by the Reserve Banks. The Reserve Banks, however, do not provide settlement finality until the business day after the settlement day. The Reserve Banks reserve the right to reverse settlement debits and credits if a participant is unable to cover its settlement debit.

Settlement entries from the Fedwire-based service are posted as they are processed. In the Fedwire-based service, individual participants with net debit positions send Fedwire funds transfers to a settlement account at a designated Reserve Bank. Once funds transfers have been received into the settlement account to cover all net debits, the clearing arrangement's agent sends Fedwire funds transfers from the settlement account to the accounts of participants in net credit positions. Under normal circumstances, this process is completed on the settlement day. Because the service uses Fedwire funds transfers, settlement payments are final and irrevocable on the settlement day.

In 1998, the Board approved an enhanced settlement service that combines and improves selected features from the Reserve Banks' existing net settlement services and may be used for either gross or net multilateral settlements. The service is fully automated and provides finality of settlement intraday on the settlement day to participants in clearing arrangements using the service. In addition, the enhanced service enables the Reserve Banks to manage and limit risk by incorporating risk controls that are as robust as those used currently in the Fedwire-based net settlement service. Settlement entries processed by the enhanced settlement service will be posted on a flow basis as they are processed and are final and irrevocable. Unlike participants using the Fedwire-based service, participants using the enhanced settlement service do not have to rely on the initiation of individual Fedwire funds transfers to conduct settlement. This feature reduces the logistical complexity for certain clearing arrangements.

The Federal Reserve expects most clearing arrangements using its net settlement services to migrate to the enhanced settlement service. At the end of 2001, the settlement sheet service will no longer be offered; clearing arrangements using the settlement sheet service that want to continue settling through the Federal Reserve will have to migrate to the enhanced settlement service. The Fedwire-based service will be available so long as there is reasonable demand for the service.

Policy Statement on Payments System Risk

The Federal Reserve System Policy Statement on Payment System Risk is amended by removing reserved footnote 3; by renumbering footnotes 1 through 4 under the headings ''I. Federal Reserve Policy,'' ''Modified Procedures for Measuring Daylight Overdrafts'' as footnotes 3 through 6 and revising redesignated footnote 4 to read as follows; and by renumbering remaining footnotes 4 through 24 as footnotes 7 through 29.

I. Federal Reserve Policy

A. Daylight Overdraft Definition

* * * * *

Modified Procedures for Measuring Daylight Overdrafts [3]

* * * * *

Post Throughout Business Day:

* * * * *

+/− Fedwire funds transfer

+/− Fedwire book-entry securities transfers

+/− Net settlement entries [4]

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 16, 1999.

Jennifer Johnson,

Secretary of the Board.

[FR Doc. 99–6865 Filed 3–19–99; 8:45 am]

BILLING CODE 6210–01–P

[3] * * *

[4] Settlement entries from the ''settlement-sheet'' service will be posted on the next clock hour approximately one hour after settlement data are received by the Reserve Banks. The settlement-sheet service will be discontinued by year-end 2001. Settlement entries from the enhanced settlement service will be posted on a flow basis as they are processed.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will address (1) research involving human embryonic stem cells, (2) the use of human biological materials in research and (3) ethical and regulatory issues in research sponsored or conducted by the U.S. in other countries. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on April 16, 1999 from 11:30 am to 12 noon.

Dates/times	Location
April 15, 1999 ..... 1:00 am–5:00 pm	East Jefferson Ballroom. Omni Charlottesville Hotel 235 West Main Street, Charlottesville, Virginia 22182.
April 16, 1999 8:00 am–5:00 pm.	Same Location as Above.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the

availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below and as soon as possible at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: March 15, 1999.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 99–6901 Filed 3–19–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0462]

Agency Emergency Processing Request Under OMB Review; Collection; Survey of Manufacturers, Distributors, Repackagers, and Other Drug Distribution Facilities for Year 2000 Compliance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information concerns a survey of manufacturers, distributors, repackagers, and other drug distribution facilities of Year 2000 compliance. The list of the Year 2000 compliant facilities will be made available to the public via the World Wide Web. FDA is requesting OMB approval within 9 days of receipt of this submission.

DATES: Submit written comments on the collection of information by April 12, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Section 705(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 375(b)) permits the Secretary of Health and Human Services (the Secretary) to disseminate information regarding food, drugs, devices, and cosmetics in situations involving in the opinion of the Secretary imminent danger to health, or gross deception of the consumer. FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j)) and 5 CFR 1320.13. FDA is requesting certain information, i.e., manufacturer, drug distribution, etc., immediately to allow health care facilities and others to assess their vulnerability to Year 2000 problems and to make corrective actions, if necessary, well in advance of January 1, 2000. The potential existence of Year 2000 problems in the drug industry, could pose potentially serious health and safety consequences. The use of normal clearance procedures would prolong the time needed to assess Year 2000 compliance by regulated industry.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Survey of Drug Manufacturers, Distributors, and Repackagers, and Other Drug Distribution Facilities for Year 2000 Compliance

Facilities will be asked to provide a status on their Year 2000 readiness. They will also be asked if they have contingency plans. The survey will also ask if they have tested, verified, and certified their systems. The request will also ask for a single point of contact at the manufacturer to discuss information.

The manufacturer will be able to provide facsimile, electronic, or paper copy of the information to FDA for inclusion in the web site data base. Government agencies, as well as health care facilities and the general public, will have access to the web site to be able to assess their vulnerability to Year 2000 problems and to take corrective actions, if necessary, in advance of January 1, 2000. The posting of information on compliant facilities is designed to provide health care facilities with a positive statement as to the status of compliant firms.

Respondents: Manufacturers, distributors, repackagers, and others in the distribution chain of drug products.

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
4,000	1	4,000	18	72,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA mailing lists were used to estimate the number of firms who would be subject to this collection. FDA estimates that it will take firms an average of 18 hours to collect, prepare, and submit the requested information. These estimates include allowance for variance in the number to be reported by a manufacturer.

Dated: March 15, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–6882 Filed 3–19–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 77N–0240; DESI 1786]

Certain Single–Entity Coronary Vasodilators Containing Isosorbide Dinitrate; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is proposing to withdraw approval of 25 abbreviated new drug applications (ANDA's) for certain single-entity coronary vasodilator drug products containing isosorbide dinitrate. FDA is offering the holders of the applications an opportunity for a hearing on the proposal. The basis for the proposal is that the sponsors of these products have failed to submit acceptable data on bioavailability and bioequivalence.

DATES: Requests for a hearing are due by April 21, 1999; data and information in support of hearing requests are due by May 21, 1999.

ADDRESSES: A request for hearing, supporting data, and other comments are to be identified with Docket No. 77N–0240 and submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857.

Comments in response to this notice, identified with the reference number DESI 1786 and a request for applicability of this notice to a specific product, should be directed to the Division of Prescription Drug Compliance and Surveillance (HFD–330), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice (DESI 1786) published in the **Federal Register** of February 25, 1972 (37 FR 4001), FDA announced its evaluation of reports received from the National Academy of Sciences/National Research Council, Drug Efficacy Study Group on certain coronary vasodilator drugs. FDA classified isosorbide dinitrate drug products as: Probably effective for the treatment and prevention of anginal attacks when administered sublingually, and possibly effective for their labeled indications relating to the management, prophylaxis, or treatment of anginal attacks when administered orally.

In notices published in the **Federal Register** of December 14, 1972 (37 FR 26623), July 11, 1973 (38 FR 18477), August 26, 1977 (42 FR 43127), October 21, 1977 (42 FR 56156), and September 15, 1978 (43 FR 41282), FDA temporarily exempted certain single-entity coronary vasodilators, including isosorbide dinitrate, from the time limits established for the Drug Efficacy Study Implementation (DESI) program. The notices established conditions for marketing these products and identical, similar, or related products § 310.6 (21 CFR 310.6) whether or not they had been marketed and whether or not they were subjects of approved new drug applications (NDA's). FDA required manufacturers and distributors to have ANDA's (conditionally approved, pending the results of ongoing studies) to market a product not the subject of NDA's. If at least one drug sponsor was conducting clinical studies on a chemical entity, FDA permitted the marketing of all firms' products containing the same chemical entity in a similar dosage form, provided each product met the other conditions. Not all sponsors, therefore, were required to conduct clinical studies. Because bioavailability is specific for an individual product, however, FDA required each firm to conduct a bioavailability study on its own product.

In a notice published in the **Federal Register** of August 3, 1984 (49 FR 31151), after completing its review of the clinical studies submitted for single-entity isosorbide dinitrate, FDA announced its conclusions that these drugs are effective. The notice set forth the marketing and labeling conditions for the products. Additionally, FDA required the submission of supplements providing acceptable in vitro dissolution tests and in vivo bioavailability/bioequivalence studies. The August 3, 1984, notice stated that supplements not fully approved within 1 year would be subject to proceedings to withdraw the previous approval and to remove the products from the market. This deadline was extended to June 26, 1987, in a notice published in the **Federal Register** of December 26, 1985 (50 FR 52856).

The sponsors of the drug products listed in section II of this document are not in compliance with the notices of August 3, 1984, and December 26, 1985, in that they either have not submitted any bioavailability/bioequivalence data or have not submitted additional data on incomplete or inadequate studies. Accordingly, this notice reclassifies the products listed in section II of this document as lacking substantial evidence of effectiveness, proposes to withdraw approval of the applications, and offers an opportunity for a hearing on the proposal.

II. ANDA'S Subject to This Notice

1. ANDA 85–783; Isordil Chewable Tablets containing 10 milligrams (mg) of isosorbide dinitrate per tablet; Wyeth–Ayerst Laboratories (formerly held by Ives Laboratories, Inc.), P.O. Box 8299, Philadelphia, PA 19101.

2. ANDA 86–045; Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Bolar Pharmaceutical Co., Inc., 130 Lincoln St., Copiague, NY 11726.

3. ANDA 86–186; Isosorbide Dinitrate (controlled release, colored) Capsules containing 40 mg of the drug per capsule; Eon Labs Manufacturing, Inc. (formerly held by The Vitarine Co., Inc.), 227–15 North Conduit Ave., Laurelton, NY 11413.

4. ANDA 86–191; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Bolar.

5. ANDA 86–224; Isosorbide Dinitrate (controlled release) Tablets containing 40 mg of the drug per tablet; Geneva Pharmaceuticals, Inc.(formerly held by Cord Laboratories, Inc.), 2555 West Midway Blvd., P.O. Box 446, Broomfield, CO 80038–0446.

6. ANDA 86–362; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Bolar.

7. ANDA 86–388; Sorbitrate (chewable) Tablets containing 10 mg of isosorbide dinitrate per tablet; Zeneca Pharmaceuticals, 1800 Concord Pike, Wilmington, DE 19897.

8. ANDA 86–788; Isosorbide Dinitrate (controlled release, green) Tablets containing 40 mg of the drug per tablet; Forest Laboratories, Inc., 919 Third Ave., New York, NY 10022.

9. ANDA 86–790; Isosorbide Dinitrate (controlled release, yellow) Tablets containing 40 mg of the drug per tablet; Forest.

10. ANDA 87–314; Isosorbide Dinitrate (chewable) Tablets containing 10 mg of the drug per tablet; D. M. Graham Laboratories, Inc., 58 Pearl St., P.O. Box P, Hobart, NY 13788.

11. ANDA 87–414; Isosorbide Dinitrate (controlled release scarlet/clear) Capsules containing 40 mg of the drug per capsule; Eon Labs.

12. ANDA 87–461; Isosorbide Dinitrate (controlled release orange/clear) Capsules containing 40 mg of the drug per capsule; Eon Labs.

13. ANDA 87–477; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Ascot Hospital Pharmaceuticals, Inc., 8055 North Ridgeway Ave., Skokie, IL 60076.

14. ANDA 87–482; Isosorbide Dinitrate (controlled release) Tablets containing 40 mg of the drug per tablet; Ascot.

15. ANDA 87–507; Isosorbide Dinitrate (controlled release white/amethyst) Capsules containing 40 mg of the drug per capsule; Eon Labs.

16. ANDA 87–558; Isosorbide Dinitrate (controlled release) Tablets containing 40 mg of the drug per tablet; Par Pharmaceutical, Inc., One Ram Ridge Rd., Spring Valley, NY 10977.

17. ANDA 87–680; Isosorbide Dinitrate (controlled release white/clear) Capsules containing 40 mg of the drug; Eon Labs.

18. ANDA 87–694; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Vangard Labs, Inc., P.O. Box 1268, Glasgow, KY 42142–1268.

19. ANDA 87–700; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Vangard.

20. ANDA 88–074; Sorbitrate Tablets containing 20 mg of isosorbide dinitrate per tablet; Zeneca.

21. ANDA 88–428; Isosorbide Dinitrate (controlled release) Tablets containing 20 mg of the drug per tablet; Forest.

22. ANDA 88–589; Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Barr Laboratories, Inc., Two Quaker Rd., P. O. Box 2900, Pomona, NY 10970–0519.

23. ANDA 88–590; Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Barr.

24. ANDA 88–591; Isosorbide Dinitrate Tablets containing 20 mg of the drug per tablet; Barr.

25. ANDA 88–592; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Barr.

III. Notice of Opportunity for a Hearing

On the basis of all available data and information, the Director of the Center for Drug Evaluation and Research is unaware of any adequate and well-controlled clinical investigation, conducted by experts who are qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355), 21 CFR 314.126, and 21 CFR part 320 that demonstrates effectiveness (i.e., bioavailability/bioequivalence) of the drugs that are in compliance with the conditions established for continued marketing.

Therefore, notice is given to the holders of the ANDA's listed previously and to a ll other interested persons that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the act withdrawing approval of the applications and all amendments and supplements thereto on the ground that new information before her with respect to the drug products, evaluated together with the evidence available to her when the applications were approved, shows there is a lack of substantial evidence that the drug products will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

In addition to the holders of the applications specifically named in section II of the document, this notice of opportunity for hearing applies to all persons who manufacture or distribute a drug product, not the subject of an approved application, that is identical, related, or similar to a drug product named previously, as defined in § 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice of opportunity for hearing to determine whether it covers any drug product that they manufacture or distribute. Such persons may request an opinion on the applicability of this notice to a specific drug product by writing to the Division of Prescription Drug Compliance and Surveillance (address given above).

This notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in § 310.6); e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act (21 U.S.C. 321(p)) or because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938, in section 201(p) of the act, or under section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with section 505 of the act and the regulations issued under it (21 CFR parts 310 and 314), an applicant and all other persons subject to this notice are hereby given an opportunity for hearing to show why approval of the applications should not be withdrawn.

An applicant or any other person subject to this notice who decides to seek a hearing shall file: (1) On or before April 21, 1999, a written notice of appearance and request for hearing, and (2) on or before May 21, 1999, the data, information, and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing, as specified in § 314.200. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, a notice of appearance and request for a hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in §§ 314.151 and 314.200 and in 21 CFR part 12.

The failure of an applicant or any other person subject to this notice to file a timely written notice of appearance and request for hearing, as required by § 314.200, constitutes an election by that person not to use the opportunity for a hearing concerning the action proposed and a waiver of any contentions concerning the legal status of that person's drug product(s). Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice of opportunity for a hearing are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18

U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505 (21 U.S.C. 355)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: March 3, 1999.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 99–6808 Filed 3–19–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0386]

Talking With Stakeholders About FDA Modernization; Notice of Meetings and Teleconference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meetings and teleconference.

SUMMARY: The Food and Drug Administration (FDA) is announcing public meetings and an interactive satellite teleconference entitled ''Talking With Stakeholders About FDA Modernization.'' The purpose of the meeting is to discuss the agency's progress in implementing the FDA Modernization Act (FDAMA) and to seek additional input on specific FDAMA performance targets.

DATES: The meetings and teleconference will be held on April 28, 1999. The deadlines for speaker registration and attendance registration are April 9, 1999, and April 16, 1999, respectively. Stakeholders interested in being a member of the studio audience should indicate their interest by April 15, 1999. Comments may be submitted by May 14, 1999. For additional information regarding registration, the meetings, and teleconference, see Table 1 in section III of this document.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, e-mail ''FDADockets@bangate.fda.gov'', or via the FDA web site ''http://www.fda.gov''.

FOR FURTHER INFORMATION CONTACT: Carrie Smith Hanley, Office of External Affairs (HF–60), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3365, FAX: 301–594–0113, e-mail: ''chanley@oc.fda.gov''.

SUPPLEMENTARY INFORMATION:

I. Background

Section 406(b) of FDAMA (21 U.S.C. 393(f) and (g)) requires the agency: To consult with its external stakeholders as it moves forward to modernize the agency; to develop a plan, based on input from stakeholders, for complying with the agency's obligations under the Federal Food, Drug, and Cosmetic Act (the act); and to periodically revisit the plan in consultation with stakeholders to make appropriate adjustments. As a culmination of these requirements, FDA will issue a performance report to Congress at the end of the 1999 calendar year.

A summary of the agency's responses to each obligation follows.

A. Consult With External Stakeholders

To respond to the first requirement of section 406(b) of FDAMA, the agency held a series of well attended public meetings last summer to obtain stakeholder views on how FDA can best meet its statutory obligations. Stakeholders offered a wealth of productive suggestions, many of which reflect their desire for greater involvement in FDA's work by contributing to the agency's future strategies and for receiving clear and timely information about the agency's processes and new regulated products.

B. Develop a Plan That Reflects Stakeholders Views

FDA listened carefully to its stakeholders and used their contributions to guide the development of a plan for complying with its obligations under FDAMA, as well as responding to the public's expectations. In the **Federal Register** of November 24, 1998 (63 FR 65000), the agency published the ''FDA Plan for Statutory Compliance'' (see FDA's web site, ''http://www.fda.gov/oc/fdama/fdamapln''). This plan provides a broad, agency wide strategic framework and specific performance goals for the current fiscal year (1999) that will allow FDA to act on stakeholder recommendations as well as allow the agency to meet its statutory obligations. The strategic framework outlines six broad directions: Strengthening the science base, closely collaborating with stakeholders, establishing risk-based priorities, adopting a systems approach, continuing to reengineer FDA processes, and capitalizing on information technology. The plan describes how the agency is already implementing many strategies in new and creative ways within each of these broad directions.

C. Periodically Revisit the Plan in Consultation with Stakeholders

FDA is now preparing to revisit the 406(b) plan as part of a formal consultation with its stakeholders on April 28, 1999. The agency would like to receive input from stakeholders on the elements of the plan that have been implemented thus far and obtain additional suggestions on how the agency can continue to improve its modernization efforts. FDA specifically wants input on how to: (1) Strengthen its science base and (2) improve its communication processes. To help focus the discussion at the April 28, 1999, meeting, FDA has designed five questions that address these two concerns. As stakeholders respond to these questions, it may be useful to review the ''FDA Plan for Statutory Compliance'' which outlines the agency's current and proposed activities in these two areas. FDA requests that stakeholders address the five questions below in their oral and/or written views:

1. Science based decisions are made throughout the life span of products from initial research, development and testing, through production, marketing, and consumption. These decisions require the best science to identify, evaluate, and balance product risks and benefits. It is crucial that FDA, in collaboration with product sponsors, develop a shared understanding of new science and technologies and their effect throughout a product's life span.

What actions do you propose the agency take to expand FDA's capability to incorporate state-of-the-art science into its risk-based decisionmaking?

2. As the agency attempts to meet its public health responsibilities, the speed of discovery results in an avalanche of new information from government, academic, and industry scientists.

What actions do you propose to facilitate the exchange and integration of scientific information to better enable FDA to meet its public health responsibilities throughout a product's lifecycle?

3. Most products in the American marketplace, especially medical ones, have two facets. On one side they benefit users and often improve lives. They are, however, rarely without risk, and their use can result in known and unknown side effects. Consumers must weigh benefits and risks before using these products, oftentimes with incomplete information.

What actions do you propose for educating the public about the concept

of balancing risks against benefits in public health decisionmaking?

4. The agency stated in the ''FDA Plan for Statutory Compliance'' that inflation has eroded real assets that can be applied to meet its public health mission while Congress has increased its responsibilities.

Because the agency must allocate its limited resources to achieve the greatest impact, what actions do you propose to enable FDA and its product centers to focus resources on areas of greatest risk to the public health?

5. FDAMA requires the agency to continue to meet with stakeholders on key issues. Meetings have ranged from explaining the positions of the agency on particular issues to working with sponsors on product applications. Historically, these interactions have benefited both stakeholders, through better knowledge of FDA, and the agency, by leading to positive changes in its operations.

Because the agency wants to assure that its stakeholders are aware of and participate in its modernization activities, what additional actions do you propose for enhancing communication processes that allow for ongoing feedback and/or evaluation of our modernization efforts?

II. Comments

Stakeholders are encouraged to submit their responses in advance of the April 28, 1999, meeting. Written comments should be identified with docket number 99N–0386 and submitted to the Dockets Management Branch (address above). In order to promote a variety of responses, stakeholders are encouraged to state a proposed action as a separate concise statement followed by a written explanation of its meaning.

III. Scheduled Meetings

Open public meetings with stakeholders will be held in several locations throughout the country. These meetings will provide down-link interactive viewing sites for the live satellite teleconference and also provide an opportunity for formal presentations to FDA's senior managers at the local meetings. The teleconference will feature Jane E. Henney, Commissioner of Food and Drugs, and Linda A. Suydam, Associate Commissioner for Strategic Management, who will be talking with stakeholders during the live satellite teleconference. These meetings are open to all stakeholders and will be co-hosted by FDA's field offices and centers, and they will focus on the specific product center listed in the first column of Table 1 of this document. The scheduled time of meetings, as listed in Table 1 of this document, includes the time devoted to the live satellite teleconference broadcast, as well as a period of time for presentations and/or discussion of the questions listed in section I.C of this document.

TABLE 1

Center/City Registration	Location/Address	Scheduled Time Of Meeting	Speaker Registration Contact	Attendance Contact
Center for Drug Evaluation and Research, Philadelphia, PA	Temple University, Main Campus, Ritter Hall, Kiva Auditorium, 130 Cecil B. Moore Ave., Philadelphia, PA	12:30 p.m. to 6 p.m. Eastern Time	Marcia Trenter, Phone: 301–827–1492, Fax: 301–827–3056, Email: Trenterm@cder.fda.gov	Anitra Brown-Reed, Phone: 215–597–4390 ext. 4202, Fax: 215–597–4660, Email: Abrown2@ora.fda.gov
Center for Biologics Evaluation and Research, Boston, MA	Boston University, School of Medicine, 715 Albany St., Boston, MA	9:30 a.m. to 3 p.m. Eastern Time	Lorrie Harrison, Phone: 301–827–5546, Fax: 301–827–3079, Email: Harrison@cber.fda.gov	Lorrie Harrison, Phone: 301–827–5546, Fax: 301–827–3079, Email: Harrison@cber.fda.gov
Center for Biologics Evaluation and Research, San Francisco, CA	South San Francisco Conference Ctr., 255 South Airport Blvd., South San Francisco, CA	9:30 a.m. to 3 p.m. Pacific Time	Lorrie Harrison, Phone: 301–827–5546, Fax: 301–827–3079, Email: Harrison@cber.fda.gov	Lorrie Harrison, Phone: 301–827–5546, Fax: 301–827–3079, Email: Harrison@cber.fda.gov
Center for Food Safety and Applied Nutrition, Chicago, IL	Ralph Metcalfe Federal Bldg., 77 West Jackson Blvd., Morrison Conference Room, Chicago, IL	12 Noon to 4:30 p.m. Central Time	Marquita Steadman, Phone: 301–827–6735, Fax: 301–480–5730, Email: msteadman@bangate.fda.gov	Kimberly Phillips, Phone: 312–353–7126 ext. 193, Fax: 312–886–3280, Email: Kphillip@ora.fda.gov
Center for Veterinary Medicine, Overland Park, KS	Johnson County Community College, Bldg. CE, rm. 211, 12345 College Blvd., (Kansas City, KS) (111th & Quivera), Overland Park, Kansas (Kansas City, KS)	11:30 a.m. to 5 p.m. Central Time	Linda Grassie, Phone: 301–827–6513, Fax: 301–594–1831, Email: Lgrassie@bangate.fda.gov	Linda Grassie, Phone: 301–827–6513, Fax: 301–594–1831, Email: Lgrassie@bangate.fda.gov
Center for Devices and Radiological Health, San Diego, CA	Scripps Research Institute, Shepherd Great Hall, Schaetzle Education Center, Scripps Memorial Hospital, 9890 Genesee Ave., La Jolla, CA, (San Diego)	9:45 a.m. to 4 p.m. Pacific Time	Ron Jans, Phone: 301–827–0048, Fax: 301–443–8810, Email: Rsj@cdrh.fda.gov	Ron Jans, Phone: 301–827–0048, Fax: 301–443–8810, Email: Rsj@cdrh.fda.gov

TABLE 1—Continued

Center/City Registration	Location/Address	Scheduled Time Of Meeting	Speaker Registration Contact	Attendance Contact
Office of Regulatory Affairs, Atlanta, GA	Food and Drug Administration, 60 Eighth St., N.E. Atlanta, GA	12 noon to 5 p.m. Eastern Time	Joann Pittman, Phone: 404–253–1272, Fax: 404–253–1202, Email: jpittman@ora.fda.gov	Joann Pittman, Phone: 404–253–1272, Fax: 404–253–1202, Email: jpittman@ora.fda.gov
FDA General, Washington, DC	United States Department of Agriculture, Jefferson Auditorium (West Wing), 14th and Independence Ave., SW., Washington, DC	12:30 p.m. to 5:30 p.m. Eastern Time	Mary Gross, Phone: 301–827–3364, Fax: 301–594–0113, Email: mgross@oc.fda.gov	Russell Campbell, Phone: 301–827–4413, Fax: 301–443–9767, Email: rcampbe2@oc.fda.gov

A separate FDAMA section on the FDA web site will provide current information about these public meetings. It is highly recommended that individuals who wish to participate at these public meetings plan to attend the entire session. Each public meeting will include an opportunity for an open comment session where attendees can express their views.

The interactive satellite teleconference is a C-Band broadcast with the following coordinates: satellite GE–2, 85 West, Transponder 3, frequency 3760 MHz Vertical. Test signal begins at 12 noon Eastern Time. The satellite teleconference will begin promptly at 1 p.m. Eastern Time and end no later than 3:30 p.m. Eastern Time. Limited seating will be available for a live studio audience at the broadcast studio in Gaithersburg, MD. Individuals representing broad interest groups are invited to participate in the studio audience. A balanced representation of FDA stakeholders will be selected. Stakeholders who are interested in participating in the broadcast as a member of the studio audience should indicate their interest by April 15, 1999, to Carrie Smith Hanley, Office of External Affairs at the phone, fax or e-mail address listed in the section of this document entitled ''**For Further Information Contact**''.

IV. Registration and Requests for Oral Presentations

All participants should send registration information (including name, title, firm name, address, telephone and fax number) to the appropriate ''attendance registration'' contact person listed in section III of this document by April 16, 1999. If you need special accommodations due to a disability, please indicate such at the time of registration.

Participants who wish to make a formal oral presentation should register with the appropriate contact for ''speaker registration'' identified by meeting in section III of this document by April 9, 1999. Formal oral presentations will not be made at the studio. Stakeholders wishing to make presentations should make their wishes known to the appropriate individuals listed in section III of this document.

V. Transcripts

Transcripts of the meetings (from each site listed in section III of this document) may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The transcript of the meeting will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday, as well as on the FDA web site ''http://www.fda.gov''.

Dated: March 17, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–7038 Filed 3–18–99; 11:48 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Council on Graduate Medical Education Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April 1999:

Name: Council on Graduate Medical Education.

Date and Time: April 14, 1999, 8:30 a.m.—5:15 p.m. April 15, 1999, 8:30 a.m.—12 p.m.

Place: Washington Plaza, 10 Thomas Circle, N.W., Massachusetts Avenue & 14th Street, Washington, D.C.

This meeting is open to the public.

Agenda: The agenda will include: Welcome and opening comments from the Administrator, Health Resources and Services Administration, the Associate Administrator for Health Professions and the Acting Executive Secretary of COGME; a panel on Ambulatory Settings, the Changing Environment, and Accreditation and Certification in GME; a panel on GME Physician Workforce Assessment Activities; and a panel on The Physician Public Health Workforce. The Council will hear the reports of its work groups on Ambulatory Programs and Financing, and Physician Workforce. The Council will also hear an update on Legislative Proposals and Activities. It will discuss the COGME 15th Report outline and its future direction.

Anyone requiring information regarding the subject should contact Stanford M. Bastacky, D.M.D., M.H.S.A., Executive Secretary, telephone (301) 443–6326, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda items are subject to change as priorities dictate.

Dated: March 16, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–6809 Filed 3–19–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health

Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: State Treatment Outcomes and Performance Pilot Studies Enhancement (TOPPS II)—New—The Center for Substance Abuse Treatment (CSAT) will develop a standardized approach that systematically measures the treatment outcomes of clients as they progress through State substance abuse treatment systems funded by the Substance Abuse Prevention and Treatment Block Grant (SAPT BG). The goal underlying TOPPS II is to enable Single State Authorities (SSAs) to collect information on SAPT BG funded treatment services and to monitor common substance abuse treatment effectiveness data measures across various State management information systems (MISs). The TOPPS II program supports initiatives to design or enhance State MISs or outcomes monitoring systems (OMS) which assess treatment outcomes measures and costs for providing treatment services. Nineteen SSAs are planning to conduct and pilot test studies of specific components of substance abuse treatment systems by incorporating common data measures across all nineteen States on an inter-State (i.e., with the States acting mutually together) basis. The TOPPS II study furthers the work begun by CSAT under TOPPS I. Ten of the nineteen TOPPS II States had received TOPPS I funding. Most of these States are now using the treatment outcomes assessment instruments developed during the TOPPS I project. All such instruments received OMB approval (OMB control number 0930–0182).

During TOPPS II initial project implementation, a consensus-derived core data set has been designed to identify key performance measures in two domains: Effectiveness and efficiency. Within these domains, data will be collected that will permit States and CSAT to assess client outcomes (improvement) for indicators such as confinement in a controlled environment, frequency of overnight hospitalizations and emergency room visits, pregnancy status, child care responsibilities, employment patterns, participation in vocational training or educational programs, arrests, living arrangements, and drug use patterns. These data will be collected through completion of the client-oriented core data set.

The inter-State evaluation design for TOPPS II participants will be a pre-test/post-test design that collects standardized data at client intake, discharge, and again at follow-up. This time frame is necessary to allow treatment providers the opportunity to assess the complex causal links between program processes and client outcomes and to monitor common substance abuse treatment effectiveness data measures across various State MISs. In addition, all State-specific designs will incorporate measures of client satisfaction at selected intervals, which is essential to the assessing the quality, efficiency and efficacy of services.

This initiative is crucial to support CSAT in developing State substance abuse treatment accountability measures. The inter-State data base will incorporate standardized outcome measures which will be voluntarily reported on by States in their Fiscal Year 2000 SAPT BG applications. It will also comply with GPRA reporting requirements to establish measurable performance goals for SAPT BG recipients. Through these efforts, TOPPS II will contribute to the future development of a standardized national approach that measures the effectiveness and efficiency of public substance abuse treatment system. The estimated annualized burden for TOPPS II core data set collection for the inter-State evaluation design, over the next three years is presented below.

THREE-YEAR REPORTING BURDEN

State and study	Number of respondents	Number of responses/respondent	Total responses	Hours per response	Total hour burden
Arizona:					
TOPPS II Core Data Elements	600	4	2,400	0.17	408
Client Satisfaction	600	1	600	0.08	48
Arkansas:					
TOPPS II Core Data Elements	1,125	3	3,375	0.17	574
Client Satisfaction	1,125	1	1,125	0.08	90
California:					
TOPPS II Core Data Elements	2,700	3	8,100	0.17	1,377
Client Satisfaction	2,700	1	2,700	0.08	216
Connecticut:					
TOPPS II Core Data Elements	240	3	720	0.17	122
Client Satisfaction	240	1	240	0.08	19
Illinois:					
TOPPS II Core Data Elements	2,000	3	6,000	0.17	1,020
Client Satisfaction	2,000	1	2,000	0.08	160
Iowa:					
TOPPS Core Data Elements	500	3	1.500	0.17	255
Client Satisfaction	500	1	500	0.08	40
Kentucky:					
TOPPS II Core Data Elements	600	3	1,800	0.17	306
Client Satisfaction	600	1	600	0.08	48
Maryland:					
Client Satisfaction	5,100	1	5,100	0.08	408
Massachusetts:					

THREE-YEAR REPORTING BURDEN—Continued

State and study	Number of respondents	Number of responses/respondent	Total responses	Hours per response	Total hour burden
TOPPS II Core Data Elements	1,532	3	4,596	0.17	781
Client Satisfaction	1,532	1	1,532	0.08	123
Missouri:					
TOPPS Core Data	500	3	1,500	0.17	255
Client Satisfaction	500	1	500	0.08	40
New Jersey:					
TOPPS II Core Data Elements	1,200	3	3,600	0.17	612
Client Satisfaction	1,200	1	1,200	0.08	96
New Hampshire:					
TOPPS II Core Data Elements	657	3	1971	0.17	335
Client Satisfaction	657	1	657	0.08	53
New York:					
TOPPS II Core Data Elements	1,875	3	5,625	0.17	956
Client Satisfaction	1,875	1	1,875	0.08	150
Oklahoma:					
Client Satisfaction	8,400	1	8,400	0.08	672
Rhode Island:					
TOPPS II Core Data Elements	1,200	3	3,600	0.17	612
Client Satisfaction	1,200	1	1,200	0.08	96
Texas:					
TOPPS II Core Data Elements	1,750	3	5,250	0.17	893
Client Satisfaction	1,750	1	1,750	0.08	140
Utah:					
TOPPS II Core Data Elements	1,050	3	3,150	0.17	536
Client Satisfaction	1,050	1	1,050	0.08	84
Virginia:					
TOPPS II Core Data Elements	1,600	3	4,800	0.17	816
Client Satisfaction	1,600	1	1,600	0.08	128
Washington:					
Client Satisfaction	32,000	1	32,00	0.08	2560
Total 3-Year Burden					15,029
Annualized Burden					5,010

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 16, 1999

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–6863 Filed 3–19–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974: As Amended; Revisions to the Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing systems of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of record notice, OS–01, ''Computerized ID Security System.'' The revisions will update the addresses for the System Locations and System Manager.

EFFECTIVE DATE: These actions will be effective on March 22, 1999.

FOR FURTHER INFORMATION CONTACT: Security Manager, Physical Security Office, Division of Employee and Public Services, National Business Center, MS–1366, 1849 C Street NW, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: In this notice, the Department of the Interior is amending OS–01, ''Computerized ID Security System,'' to update and more accurately identify the addresses of the System Locations and the System Manager. Accordingly, the Department of the Interior proposes to amend the ''Computerized ID Security System,'' OS–01 in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/OS–01

SYSTEM NAME:

Computerized ID Security System—Interior, OS–01

SYSTEM LOCATION:

(1) Data covered by this system is maintained in the following location: U.S. Department of the Interior, Office of the Secretary, National Business Center, Division of Employee and Public Services, Physical Security Office, Room 1229, Main Interior Building, 1849 C Street NW, Washington, DC 20240.

(2) Security access to data covered by this system is available at all locations within the vicinity of the Main Interior Building and the South Interior Building complex where staffed guard stations are established.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have had access to the Main and South Interior Buildings. These include, but are not limited to, the following groups: Current agency employees, former agency employees, agency contractors, persons authorized to perform or to use services provided in the Main and South Interior Buildings (e.g., Department of the Interior Federal Credit Union, Interior Recreation Association Fitness Center, etc.), volunteers and visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained on current agency employees, former agency employees, and agency contractors include the following data fields: Name, Social Security number, date of birth, signature, image (photograph), hair color, eye color, height, weight, organization/office of assignment, telephone number of emergency contact (optional/voluntary data field), date of entry, time of entry, time of exit, security access category, number of ID security cards issued, ID security card issue date, ID security card expiration date, and ID security card serial number. Records maintained on all other individuals covered by the system include the following data fields: Name, Social Security number (or one of the following: Drivers License number, ''Green Card'' number, Visa number, or other ID number), U.S. Citizenship (yes or no/logical data field), date of entry, time of entry, time of exit, purpose for entry, agency point of contact, security access category, number of ID security cards issued, ID security card issue date, ID security card expiration data, and ID security card serial number.

AUTHROITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Presidential Memorandum on Upgrading Security at Federal Facilities, June 28, 1995.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purposes of the system are:

(1) To ensure the safety and security of the Main and South Interior Buildings and their occupants.

(2) To verify that all persons entering the buildings are authorized to enter them.

(3) To track and control ID security cards issued to persons entering the buildings.

Disclosures outside the Department of the Interior may be made:

(1) To security service companies that provide monitoring and maintenance support for the system.

(2) To the Federal Protective Service and appropriate Federal, State and local law enforcement agencies to investigate emergency response situations or to investigate and prosecute the violation of law, statute, rule, regulation, order or license.

(3) To the U.S. Department of Justice or to a court or adjudicative body with jurisdiction when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(4) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

(5) To representatives of the General Services Administration or the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2903 and 2904.

Note: Disclosures within the Department of the Interior of data pertaining to date and time of entry and exit of an agency employee may not be made to supervisors, managers or any other persons (other than the individual to whom the information applies) to verify employee time and attendance record for personnel actions because 5 U.S.C. 6106 prohibits Federal Executive agencies (other than the Bureau of Engraving and Printing) from using a recording clock within the District of Columbia, unless used as a part of a flexible schedule program under 5 U.S.C. 6120 et seq.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in computerized form on a non-removable hard disk. Record backups are stored on removable diskettes and/or tapes.

RETRIEVABILITY:

Records are retrievable by name, Social Security number, other ID number, image (photograph), organization/office of assignment, agency point of contact, security access, category, date of entry, time of entry, time of exit, ID security card issue date, ID security card expiration date, and ID security card serial number.

SAFEGUARDS:

The computer on which records are stored is located in an office that is secured by an alarm system and off-master key access. The computer itself is key-locked and access to the system is password-protected. Access granted to individuals at guard stations is password-protected; each person granted access to the system at guard stations must be individually authorized to use the system. A Privacy Act Warning Notice appears on the monitor screen when records containing information on individuals are first displayed. Back up diskettes/tapes are stored in a locked and controlled room in a secure, off-site location.

RETENTION AND DISPOSAL:

Records relating to persons covered by the system are retained in accordance with General Records Schedule 18, Item No. 17. Unless retained for specific, ongoing security investigations:

(1) Records relating to individuals other than employees are destroyed two years after ID security card expiration date.

(2) Records relating to date and time of entry and exit of employees are destroyed two years after date of entry and exit.

(3) All other records relating to employees are destroyed two years after ID security card expiration date.

SYSTEM MANAGER(S) AND ADDRESS:

Security Manager, Physical Security Office, Division of Employee and Public Services, National Business Center, MS–1366, 1849 C Street NW, Washington, DC 20240.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on him or her should address his/her request to the Security Manager. The request must be in writing and signed by the requester. (See 43 CFR 2.60).

RECORDS ACCESS PROCEDURES:

An individual requesting access to records maintained on him or her should address his/her request to the Security Manager. The request must be in writing and signed by the requester. (See 43 CFR 2.63.)

CONTESTING RECORDS PROCEDURES:

An individual requesting amendment of a record maintained on him or her should address his/her request to the Security Manager. The request must be in writing and signed by the requester. (See 43 CFR 2.71.)

RECORD SOURCE CATEGORIES:

Individuals covered by the system, supervisors and designated approving officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–6883 Filed 3–19–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Office of Aircraft Services

Privacy Act of 1974: As Amended; Revisions to the Existing System of Records

AGENCY: Office of Aircraft Services, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of Aircraft Services is issuing public notice of its intent to modify an existing Privacy Act system of records notice, AAS–97, ''Pilot Flight Time Report.'' The revisions will update the name and number of the system and the addresses for the System Locations and System Managers.

EFFECTIVE DATE: These actions will be effective on March 22, 1999.

FOR FURTHER INFORMATION CONTACT: Director, Office of Aircraft Services, 2350 W. Robinson Road, Boise, Idaho 83705–5355.

SUPPLEMENTARY INFORMATION: The Office of Aircraft Services is amending AAS–97 (identified also as OS–97), ''Pilot Flight Time Report,'' to more accurately identify and describe the system of records and to update and more accurately identify the addresses of the System Locations and the Systems Managers in the national headquarters and regional office. Accordingly, the Office of Aircraft Services proposes to amend the ''Pilot Flight Time Report,'' AAS–97, notice in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/OAS–01

SYSTEM NAME:

Official Pilot Folder—Interior, OAS–01

SYSTEM LOCATION:

(1) National headquarters: Office of Aircraft Services, Financial and Information Management, 2350 W. Robinson Road, Boise, Idaho 83705.

(2) Regional office: Office of Aircraft Services, Alaska Regional Office, 4837 Aircraft Drive, Anchorage, Alaska 95502–1052.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Professional, dual-function and incidental pilots employed by Department of the Interior bureaus and offices.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

The system contains information relative to certificates, qualifications, experience levels, currency and proficiency of pilots.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Reorganization Plan 3 of 1950.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the system are:

(1) To determine pilot qualifications.

(2) To monitor compliance with Office of Aircraft Services directives and Federal Aviation Regulations.

Disclosure outside the Department of the Interior may be made:

(1) To the U.S. Department of Justice or to a court or adjudicative body with jurisdiction when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(2) Of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license.

(3) To a Federal agency which has requested information relevant or necessary to the hiring or retention of an employee, or issuance of a security clearance, license, pilot qualification card, grant or other benefit.

(4) To Federal, State, local agencies or commercial business where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of as security clearance, license, pilot qualification card, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in manual and automated form.

RETRIEVABILITY:

Records may be retrieved by Social Security number, name, agency or location.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Records are maintained in accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are retained in accordance with approved records retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

(1) National headquarters: Director, Office of Aircraft Services, 2350 W. Robinson Road, Boise, Idaho 83705.

(2) Regional office: Regional Director, Alaska Regional Office, Office of Aircraft Services, 4837 Aircraft Drive, Anchorage, Alaska 95502–1052.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access shall be addressed to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies and from Office of Aircraft Services records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–6884 Filed 3–19–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Exchange Proposal; Proposed Exchange of Lands in Elko, Eureka, and Humboldt Counties, Nevada N–59716

United States Department of the Interior, Bureau of Land Management, Elko District, 3900 E. Idaho St., Elko, Nevada 89801.

Notice is hereby given that the Bureau of Land Management is considering a proposal to exchange land pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended. The exchange has been proposed by Newmont Gold Company.

Newmont Gold Company has proposed to exchange to the United States the following described private land or interest in land:

Mount Diablo Meridian, Nevada

T. 31 N., R. 51 E.,
Section 3, that part lying Northwesterly of a line parallel with and 200 feet distant Northwesterly from the center line of Central Pacific Railways Company's Railroad as now constructed;
Section 9, that part of SE¼ North of a line parallel with and 100 feet distant Northerly of central line of Western Pacific Railways Company's railroad as now constructed.
T. 32 N., R. 54 E.,
Section 1, All (lot 1 thru 4, S½N½, S½), less three parcels;
Section 11, All; Section 15, All.
T. 33 N., R. 54 E.,
Section 13, That portion lying west of the center of the channel of the South Fork of the Humboldt River;
Section 23, All, less two parcels;
Section 25, All, less one parcel;
Section 27, All, less one parcel;
Section 35, All.
T. 33 N., R. 55 E.,
Section 19, All.
T. 41 N., R. 57 E.,
Section 22, SE¼NW¼, E½SW¼, W½SE¼;
Section 27, W½NE¼, E½NW¼, N½SE¼.
T. 43 N., R. 57 E.,
Section 2, SE¼SE¼;
Section 11, NE¼, E½W½, N½SE¼;
Section 14, W½, N½SE¼;
Section 15, E½E½, SW¼SE¼;
Section 22, E½NE¼;
Section 23, NW¼NE¼, NW¼, N½SW¼, SE¼SW¼, SW¼SE¼;
Section 26, W½NE¼, SE¼NE¼, E½NW¼.

Comprising 7,795 acres, more or less.

In exchange, the United States would transfer title to an acreage of equal value, as determined by appraisal and in accordance with the procedures found in 43 CFR 2201.6, from the following described pool of public land:

Mount Diablo Meridian, Nevada

T. 39 N., R. 43 E.,
Section 5, All;
Section 8, All, less and excepting Patent No. 27–96–0036;
Section 9, W½;
Section 17, N½;
Section 32, S½SW¼SW¼SW¼, S½SE¼SW¼SW¼, S½SW¼SE¼SW¼.
T. 36 N., R. 50 E.,
Section 21, SW¼.
T. 33 N., R. 51 E.,
Section 12, All;
Section 14, All.
T. 34 N., R. 51 E.,
Section 16, All;
Section 20, All;
Section 22, W½, SW¼SE¼.
T. 35 N., R. 51 E.,
Section 30, E½.
T. 32 N., R. 52 E.,
Section 25, All.
T. 33 N., R. 52 E.,
Section 5, lot 4 (a portion thereof), SW¼NW¼, SW¼, SW¼SE¼, SE¼SE¼ (a portion thereof);
Section 8, All;
Section 18, All.
T. 32 N., R. 53 E.,
Section 21, All;
Section 23, All;
Section 25, W½;
Section 26, All;
Section 29, S½; Section 31, lot 1 thru 18, NE¼, N½SE¼; Section 35, lot 1 thru 4, N½, N½S½.

Comprising 11,611.57 acres, more or less.

Subject to valid existing rights, the public land identified above has been segregated from appropriation under the public land laws and mineral laws.

In accordance with 43 CFR 4110.4–2(b), this Notice of Exchange Proposal constitutes 2 years' prior notification to grazing permittees affected by this action. Completion of the exchange may result in adjustments to the permitted use on public lands within the following grazing allotments:

Bullhead;
Leppy Hills;
UT/NV #1 North;
Pilot;
East Big Springs;
West Big Springs.

More detailed information concerning the proposed exchange may be obtained from Robert Marchio, Bureau of Land Management, Elko District, 3900 E. Idaho St., Elko, Nevada 89801, (702) 753–0200.

Interested parties may submit comments concerning the proposed exchange including notification of any liens, encumbrances, or other claims relating to the lands being considered for exchange to the Field Manager, Elko District, at the above address. In order to be considered in the environmental analysis of the proposed exchange, comments must be in writing to the Field Manager and postmarked or delivered within 45 days of initial publication of this notice.

Dated: March 9, 1999.

Helen Hankins,

Field Manager.

[FR Doc. 99–6837 Filed 3–19–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Civil Penalties

AGENCY: Minerals Management Service (MMS).

ACTION: Notice Summarizing OCS Civil Penalties Paid, January 1, 1998—December 31, 1998.

SUMMARY: This notice provides a listing of civil penalties paid January 1, 1998, through December 31, 1998, for violations of the OCS Lands Act. The goal of the MMS OCS Civil Penalties Program is to ensure safe and clean operations on the OCS. Through the pursuit, assessment, and collection of civil penalties and referrals for the consideration of criminal penalties, we designed the program to encourage compliance with OCS statutes and regulations. The purpose of publishing the penalties summary is to provide information to the public on violations of special concern in OCS operations and to provide an additional incentive for safe and environmentally sound operations.

FOR FURTHER INFORMATION CONTACT: Greg Gould, Program Coordinator, at (703) 787–1591.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act (OPA 90) strengthened section 24 of the OCS Lands Act Amendments of 1978. Subtitle B of OPA 90, titled ''Penalties,'' increased the amount of the civil penalty from a maximum of $10,000 to a maximum of $20,000 per violation for each day of noncompliance. More important, in cases where a failure to comply with applicable regulations constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life); property; any mineral deposit; or the marine, coastal, or human environment; OPA 90 provided the Secretary of the Interior (Secretary) with the authority to assess a civil penalty without regard to the requirement of expiration of a period of time allowed for corrective action.

On August 8, 1997, we published new regulations implementing the civil penalty provisions of the OCS Lands Act. Written in ''plain language,'' the new question-and-answer format provides a better understanding of the OCS civil penalty process. In addition, the provisions of OPA 90 require the Secretary to adjust the maximum civil penalty to reflect any increases in the Consumer Price Index. The new rule increased the maximum civil penalty to $25,000 per day, per violation.

Between August 18, 1990, and December 31, 1998, we initiated 250 civil penalty reviews, assessed 151 civil penalties, and collected $2,678,020 in fines. We dismissed 24 cases, and 75 are under review.

On September 1, 1997, the Associate Director for Offshore Minerals Management issued a notice informing lessees and operators of Federal oil, gas, and sulphur leases on the OCS that we will publish an annual summary of OCS civil penalties paid. The annual

summary will highlight the identity of the party, the regulation violated, and the amount paid. The following table provides a listing of the penalties paid between January 1, 1998, and December 31, 1998. Please note, we published a direct final rule (5/29/98, 63 FR 29477) that renumbers each section in 30

CFR part 250. The regulations cited in the table are the citation numbers that were current at the time of the violation and do not reflect the redesignation.

A quarterly update of this list, along with additional information related to the renumbering of the regulations, is posted on the MMS worldwide web home page, http://www.mms.gov.

OCS CIVIL PENALTIES PAID—CALENDAR YEAR 1998

Operator name and case No.	Violation summary and violation date(s)	Penalty paid and date paid	Regulation(s) violated 30 CFR
Exxon Corp, PAC–96–01.	The failure to close pig launcher drain valves allowed oil to flow into the Pacific Ocean. 5/1/96.	$25,000 3/24/98	250.40(a)
Union Pacific Resource, GOM–96–37.	Sump Pump found to be inoperable; pressure safety high level (PSHL) for the sump pump bypassed; PSHL for the platform fuel gas filter bypassed. 5/7/95.	$9,000 1/14/98	250.123(c)(1), 250.40(b)(4)
Shell Offshore Inc, GOM–97–05.	The gas and fire detection systems for three platforms were not tested within the required timeframes. 02/26/96–02/27/96.	$18,000 2/12/98	250.124(a)(8)
Shell Offshore Inc, GOM–97–06A.	A breaker used to conduct an emergency shut down (ESD) test had a bad transformer. On numerous occasions when the ESD test was performed, the operator would have to excite the transformer by pulling a 480 volt cable out of the breaker and then be repowered with the 480 volt cable removed. The operator would then stab the 480 volt cable back into the breaker causing an arc. 05/27/96–07/10/96.	$75,0000 5/07/98	250.20(a)
SOCO Offshore Inc, GOM–97–07.	Burner safety low for heater treater inoperable. 07/30/96–11/12/96	$40,000 04/16/98	250.122(b)
CNG Producing Company, GOM–97–08.	Wells A–2, A–4, A–9, A–10, and A–14 surface controlled subsurface safety valves (SCSSV) were bypassed with the wells hydraulic control lines isolation vales closed. The wells were not attended or flagged. 11/03/96–11/04/96.	$40,000 05/19/98	250.123(c)(1)
Conoco Inc, GOM–97–13.	ESD was bypassed on Subsea Well No. 5. 09/20/95	$5,000 01/26/98	250.20(a) 250.53(c)
Union Pacific Resource, GOM–97–15.	The level safety high (LSH) and level safety low (LSL) were bypassed on the fuel gas scrubber. 12/10/96.	$5,000 02/18/98	250.123(c)(1)
Phillips Petroleum Company, GOM–97–17.	Multiple safety devices were not tested within the required time frame. 11/20/96	$72,500 03/26/98	250.124(a)(3)(i), 250.124 (a)(3)(ii), 250.124(a) (4), 250.124(a) (5), 250.124(a) (10)
Century Offshore Management, GOM–97–18.	The total safety system shutdown, the performax, and the LSH on the skimmer sump tank were bypassed. 01/16/97–01/19/97.	$66,000 01/15/98	250.123(c)(1)
Walter Oil & Gas Corp, GOM–97–19.	Well A–1 hydraulic control line to SCSSV closed and not flagged or monitored. 02/12/97.	$5,000 02/18/98	250.123(c)(1)
Walter Oil & Gas Corp, GOM–97–25.	Multiple safety devices were bypassed on the pipeline pumps, oil surge tank, and sump tank. 03/22/97.	$17,000 06/23/98	250.123(c)(1)
Shell Offshore Inc, GOM–97–28.	A flash fire occurred when using a standard electric drill to drill holes in the floatation cell. 06/08/97.	$12,000 06/04/98	250.123(b)(10)
Chevron USA Inc, GOM–97–29.	There was not an operable firewater system or approved chemical firefighting system on the platform. 07/3/96–07/29/96.	$162,000 02/23/98	250.123(b)(8)(i)
Conoco Inc, GOM–97–31.	There were 2 openings on the production deck where grating had been removed. There were no barricades or flagging indicating the holes; there was no one monitoring the hole. 05/08/97.	$5,000 05/27/98	250.20(a)
Chevron USA Inc, GOM–97–32.	During the positioning of a lift barge, the legs of the barge ruptured a high pressure gas pipeline. The pipelines were not marked nor was the captain of the vessel made aware of the pipelines location. 02/02/97.	$10,000 06/04/98	250.20(a)
Chevron USA Inc, GOM–97–33.	ESD stations were bypassed at the supply control panel. ESD station switches in the wellbay, compressor, blowcase, and +10-foot deck level areas did not activate the ESD. 09/06/96.	$10,000 04/02/98	250.123(c)(1)
Taylor Energy Company, GOM–97–34.	SCSSV was blocked out of service on Well E–17; tubing plug was not tested within the required time period for Well E–5. 07/03/96.	$6,500 05/15/98	250.123(c)(1), 250.124(a)(1)(iii)
Chevron USA Inc, GOM–97–36.	An employee was injured when he fell through open grating with no barrier. 03/13/97.	$15,000 03/4/98	250.20(a)
Chevron USA Inc, GOM–97–38.	Two workers did not have fall protection secured while working near an open hole. 02/05/97.	$10,000 05/06/98	250.20(a)
Coastal Oil & Gas Corp, GOM–97–41.	Numerous safety devices blocked out of service at the main control panel. 04/2/97.	$135,000 08/3/98	250.123(c)(1)
Shell Offshore Inc, GOM–97–42.	The gas and fire detection systems were not tested within the required timeframes. 06/24/97.	$10,000 06/15/98	250.124(a)(8)
Walter Oil & Gas Corp, GOM–97–44.	The LSL sensor for the Compressor Suction Scrubber failed to operate. The adjustment screw was set in such a manner that the sensor would not activate (bypassed). 06/01/97.	$10,000 06/11/98	250.123(b)(7)(i)
Ocean Energy Inc, GOM–97–45.	A pollution incident occurred because the shutdown relay on floatation cell was blocked out of service (bypassed). 03/4/97.	$15,000 10/9/98	250.40(a), 250.123(c)(1)

OCS CIVIL PENALTIES PAID—CALENDAR YEAR 1998—Continued

Operator name and case No.	Violation summary and violation date(s)	Penalty paid and date paid	Regulation(s) violated 30 CFR
Norcen Explorer Inc, GOM–97–46.	Safety devices on 7 vessels were found bypassed. Pollution occurred when the LSH on the bad oil tank was bypassed. Well A–10 produced for 32 days without a subsurface safety valve. 01/14/97—06/29/97.	$103,200, 12/29/98	250.40(a), 250.121(e)(3), 250.123(c)(1)
Ocean Energy Inc, GOM–97–48.	Three open holes were not properly barricaded or flagged. 06/19/97	$15,000 07/09/98	250.20(a)
Burlington Resources, GOM–97–49.	LSH on Vent Scrubber was inoperable. 07/09/97	$5,000 05/05/98	250.123(c)(1)
Panaco Inc, GOM–97–50.	Platform sump system was inoperable; sump tank LSH was not tested within the required time period. 04/25/96.	$64,000 08/6/98	250.40(b)(4), 250.122(b)
Apache Corporation, GOM–97–51.	The safety system for the compressor was bypassed at the master panel. 03/12/96.	$8,000 08/19/98	250.123(c)(1)
Conoco Inc, GOM–97–52.	LSH for the platform sump tank was bypassed. 02/22/97	$8,000 05/18/98	250.123(c)(1)
Callon Petroleum Oper, GOM–97–54.	SCSSV for Well A–1 was bypassed at the wellhead; isolation valve was closed during testing and remained closed for 2 days until discovered during inspection. 07/10/97–07/11/97.	$10,000 05/06/98	250.123(c)(1)
Seneca Resources Corp, GOM–97–58.	The SCSSV was detected in the by-pass mode for Well E016. 02/03/97	$6,000 06/22/98	250.123(c)(1)
Marathon Oil Company, GOM–97–59.	The air supply valves to the air pumps that operate the blowout preventer accumulator charging system were detected in the by-passed position during the inspection. 07/18/97–07/25/97.	$26,000 06/04/98	250.56(d)(2)
Norcen Explorer Inc, GOM–97–60.	PSHL bypassed on Well 16 A; SCSSV bypassed on Well 32. 09/07/97	$12,000 04/17/98	250.123(c)(1), 250.123(c)(4)
Nuevo Energy Company, PAC–98–01.	Failure to have a qualified crane operator, exceeding dynamic rating for crane, and failure to prevent pollution. 01/15/98.	$35,000 07/30/98	250.20(a), 250.20(c), 250.40(a)
Conoco Inc, GOM–98–02.	When Plug and Abandon operations were being conducted, a small fire flashed from a pneumatic saw that was being powered by instrument gas to cut casing. The fire burned an employee standing next to the operator of the saw. 08/06/97.	$9,000 05/18/98	250.20(a)&(b)
Nuevo Energy Company, PAC–98–02.	Failure to perform pre-use inspection on a crane. 04/4/98	$18,000 09/10/98	250.20(c)
Taylor Energy Company, GOM–98–03.	Taylor did not test the safety devices within the required 6-week interval. 08/20/97.	$7,000 03/19/98	250.124(a)(3), 250.124(a)(5), 250.124(a)(6), 250.20 (a)&(b)
Panaco Inc, GOM–98–05.	The fire watch did not have a portable gas detector while conducting welding operations. Production equipment within 35 feet of the welding did not have flame-proof covers. The platform sump's LSH was pinned out of service. 08/18/97—09/02/97.	$15,000 06/05/98	250.52(a)(4), 250.52(d)(2), 250.123(c)(1)
Ocean Energy Inc, GOM–98–06.	The hydraulic line for Well 9 was found isolated in the hydraulic panel (manual override) in a closed position. The valve was not flagged or being monitored. 07/21/97.	$6,000 06/12/98	250.123(c)(1)
Shell Deepwater Development, GOM–98–07.	An employee was observed working near an unflagged open hole that did not have a barrier around it. The employee was not wearing full protection gear. 09/19/97.	$15,000 09/1/98	250.20(a)(b)
Samedan Oil Corporation, GOM–98–08.	The PSHL was locked in open position, no fire detection system, pressure safety element set higher than allowed, and the LSH was bypassed. 08/10/96—10/8/96.	$24,000 07/8/98	250.123(b)(1)(i), 250.123(b)(9), 250.123(c), 250.123(c)(1)
Gulfstar Energy Inc, GOM–98–09.	Failure to test pressure safety valves. 03/15/96—01/15/97	$15,000 07/17/98	250.124(a)(2)
Aviva America Inc, GOM–98–16.	The SCSSV was found bypassed for 6 wells. 12/18/97	$42,000 09/10/98	250.123(c)(1)
OXY USA Inc, GOM–98–18.	Rig personnel were working in a hazardous area without wearing full protection gear. 09/18/97.	5,00 06/22/98	250.20(a)
Ocean Energy Inc, GOM–98–24.	The hydraulic line for well 11-D ball valve (SCSSV) found isolated at the tree. Valve was not flagged or being monitored. 07/21/97.	$6,000 12/21/98	250.123(c)(1)
Chevron USA Inc, GOM–98–25.	ESD system remote on the boat landing was bypassed. 11/24/97	$15,000 06/09/98	250.123(c)(1)
Chevron USA Inc, GOM–98–32.	An injury occurred when the break-out tong was rigged up and used without hanging the tong off from an air hoist line and without securing the tong with a snub line. 11/11/97.	$23,000 06/17/98	250.20(a)
Unocal Exploration Corp, GOM–98–33.	The LSH on the sump was bypassed. 09/27/97	$3,000 09/15/98	250.40(a), 250.123(c)(1)
Flextrend Development, GOM–98–34.	The SCSSV was bypassed for Wells A–2, A–4, and A–5. 11/16/97—11/17/97	$24,000 08/12/98	250.123(c)(1)

Total Penalties Paid 1/1/98–12/31/98; 50 Cases: $1,297,200

Dated: March 16, 1999.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 99–6868 Filed 3–19–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final General Management Plan/ Environmental Impact Statement for Isle Royale National Park, Keweenaw County, MI

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The National Park Service published a notice in the **Federal Register** of November 3, 1998, (63 FR 59328) concerning the availability of the Final General Management Plan and Final Environmental Impact Statement (GMP/EIS) for Isle Royale National Park. The Environmental Protection Agency's notice of availability for this document appeared in the **Federal Register** dated November 6, 1998 (63 FR 59988). The Final EIS circulated in association with these notices inadvertently did not include the cover sheet as required by 40 CFR 1502.11. The omission may have resulted in lack of clarity about where to send comments or about the due date for those comments. Accordingly, the National Park Service is reannouncing the availability of the Final GMP/EIS, and is reinitiating the no action period for review of the EIS as required by 40 CFR 1506.10(a)(2).

DATES: The required no action period for review of the Final GMP/EIS will end 30 days after the Environmental Protection Agency has again listed the availability of the document (with cover sheet) in the **Federal Register**. A record of decision will follow the no action period.

FOR FURTHER INFORMATION CONTACT: Superintendent, Isle Royale National Park, 800 E. Lakeshore Drive, Houghton, Michigan 49931 or telephone: 906–482–0984.

SUPPLEMENTARY INFORMATION: No changes have been made to the Final GMP/EIS since originally made available on November 3, 1998. Only a cover sheet has been added to the document. The Final GMP/EIS presents five alternatives for future management of Isle Royale National Park. The draft plan was on review in April and May 1998. This final plan incorporates comments made during that public review.

Copies of the Final GMP/EIS are available at the following locations: Office of Public Affairs, National Park Service, 1849 C Street, NW, Washington, D.C. 20013; Department of Interior Natural Resource Library, 1849 C Street, NW, Washington, D.C. 20013; National Park Service, Midwest Regional Office,1709 Jackson Street, Omaha, Nebraska 68102; and Isle Royale National Park, 800 E. Lakeshore Drive, Houghton, Michigan 49931. A copy of the document can also be viewed via the Internet at: www.nps.gov/planning/isro/fgmp/fgmp.htm.

Dated: March 12, 1999.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 99–6842 Filed 3–19–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 13, 1999. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by April 6, 1999.

Carol D. Shull,

Keeper of the National Register.

CONNECTICUT

Fairfield County

Shambaugh House, 12 Old Hill Rd., Westport, 99000432

New London County

Jail Hill Historic District, Roughly along Cedar, School, Fountain, Happy, and John Sts., Norwich, 99000431

MICHIGAN

Washtenaw County

Main Street Historic District, 3–153 E. Main, 1–41 W. Main, and 8 Park Lane, Milan, 99000434

Wayne County

Kingston Arms Apartments, 296 E. Grand Blvd., Detroit, 99000433

Saint Paul Manor Apartments, 356 E. Grand Blvd., Detroit, 99000435

NORTH CAROLINA

Gaston County

Robinson—Gardner Building, 173–175 W. Main Ave., Gastonia, 99000436

Henderson County

Bryn Avon, Jct. of River Rd. and Mallett Rd., Etowah vicinity, 99000437

WASHINGTON

Thurston County

Allen—Beals House (Women's History in Olympia MPS) 726 S. Percival, Olympia, 99000438

Kearney House—YWCA Clubhouse (Women's History in Olympia MPS), 220 E. Union, Olympia, 99000439

WISCONSIN

Shawano County

Shawano Main Street Historic District, Roughly including E. Division St. and S. Main St., Shawano, 99000440

[FR Doc. 99–6855 Filed 3–19–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Civil Rights Division; Office of Special Counsel for Immigration Related Unfair Employment Practices; Immigration Related Employment Discrimination; Public Education Grants

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, Civil Rights Division, U.S. Department of Justice.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) announces the availability of funds for grants to conduct public education programs about the rights afforded potential victims of employment discrimination and the responsibilities of employers under the antidiscrimination provisions of the Immigration and Nationality Act (INA), 8 U.S.C. 1324b.

It is anticipated that a number of grants will be competitively awarded to applicants who can demonstrate a capacity to design and successfully implement public education campaigns to combat immigration related employment discrimination. Grants will range in size from $40,000 to $100,000.

OSC will accept proposals from applicants who have access to potential victims of discrimination or whose experience qualifies them to educate workers, employers and the general public about the antidiscrimination provisions of the INA. OSC welcomes proposals from diverse nonprofit

organizations such as local, regional or national ethnic and immigrants' rights advocacy organizations, trade associations, industry groups, professional organizations, or other nonprofit entities, including state and local government agencies, providing information services to potential victims of discrimination and/or employers.

APPLICATION DUE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Patita McEvoy, Public Affairs Specialist, Office of Special Counsel for Immigration Related Unfair Employment Practices, 1425 New York Ave., N.W., Suite 9000, P.O. Box 27728, Washington, D.C. 20038–7728. Tel. (202) 616–5594, or (202) 616–5525 (TDD) for the hearing impaired). OSC's e-mail address is osc.crt@usdoj.gov.

SUPPLEMENTARY INFORMATION: The Office of Special Counsel for Immigration Related Unfair Employment Practices of the Civil Rights Division of the Department of Justice announces the availability of funds to conduct cost-effective public education programs concerning the antidiscrimination provisions of INA. Funds will be awarded to selected applicants who propose cost-effective ways of educating employers, workers covered by this statute, and/or the general public.

Background

The Immigration and Nationality Act makes knowingly hiring unauthorized workers unlawful, and requires employers to verify the identity and work authorization of all new employees. Employers who violate this law are subject to sanctions, including fines and possible criminal prosecution.

The INA also prohibits employers of four or more employees from discriminating on the basis of citizenship status or national origin in hiring, firing, recruitment or referral for a fee, and prohibits employers from engaging in document abuse in the employment eligibility verification process.

U.S. citizens and certain classes of work authorized individuals are protected from *citizenship status discrimination*. Protected non-citizens include:

- Temporary Residents;
- Legal Permanent Residents;
- Refugees;
- Asylees.

Citizens and *all* work authorized individuals are protected from *discrimination on the basis of national origin*. However, this prohibition applies only to employers with four to fourteen employees. National origin discrimination complaints against employers with fifteen or more employees remain under the jurisdiction of the Equal Employment Opportunity Commission pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. 200e, *et seq.*

In addition, under the *document abuse provision* of the law, employers must accept all forms of work authorization and proof of identify allowed by the Immigration and Naturalization Service (INS) for completion of the Employment Eligibility Verification (I–9) Form. Employers may not prefer or require one form of documentation over another for hiring purposes. Requiring more or specific documents to prove identity and work authorization may constitute document abuse.

On October 1, 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). IIRIRA expands the existing electronic employment eligibility pilot programs being carried out by the INS, and will reduce the number of documents that employers can accept to verify an individual's work eligibility. These changes are expected to be phased in over the next year.

OSC is responsible for receiving and investigating discrimination charges and, when appropriate, filing complaints with specially designated administrative law judges. OSC also initiates independent investigations of possible immigration related job discrimination.

While OSC has established a record of vigorous enforcement, studies by the U.S. General Accounting Office and other sources have shown that there is an extensive lack of knowledge on the part of protected individuals and employers about the antidiscrimination provisions of the INA. Enforcement cannot be effective if potential victims of discrimination are not aware of their rights. Moreover, discrimination can never be eradicated so long as employers are not aware of their responsibilities.

Purpose

OSC seeks to educate both workers and employers about their rights and responsibilities under the antidiscrimination provisions of INA. Because previous grantees have developed a wealth of materials (e.g., brochures, posters, booklets, information packets, and videos) to educate these groups, OSC has determined that the main focus of the program should be on the *actual delivery* of these materials to educate further both potential victims and employers. OSC seeks proposals that will use *existing materials* effectively to educate large numbers of workers or employers about exercising their rights or fulfilling their obligations under the antidiscrimination provisions. OSC will, of course, consider any proposal that articulates and substantiates other creative means of reaching these populations.

Program Description

The program is designed to develop and implement cost-effective approaches to educate potential victims of employment discrimination about their rights and to educate employers about their responsibilities under INA's antidiscrimination provisions. *Applications may propose to educate potential victims only, employers only, or both in a single campaign*. Program budgets must include the travel, lodging and other expenses necessary for up to two program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, D.C. at the beginning of the grant period (late Autumn). Proposals should outline the following key elements of the program:

Part I: Targeted Population

The educational efforts under the grant should be directed to (1) work-authorized non-citizens who are protected individuals, since this group especially vulnerable to employment discrimination; (2) those citizens who are most likely to become victims of employment discrimination; and/or to (3) employers. The proposals should define the characteristics of the work authorized population or the employer group(s) targeted for the educational campaign, and the applicant's qualifications to reach credibly and effectively large segments of the campaign targets.

The proposals should also detail the reasons for targeting each group of protected individuals or employers by describing particular needs or other factors to support the selection. In defining the campaign targets and supporting the reasons for the selection, applicants may use studies, surveys, or any other sources of information of generally accepted reliability.

Part II: Campaign Strategy

We encourage applicants to devise effective and creative means of public education and information dissemination that are specifically designed to reach the widest possible targeted audience. Those applicants proposing educational campaigns addressing potential victims of discrimination should keep in mind that some of the traditional methods of

public communication may be less than optimal for educating members of national or linguistic groups that have limited community-based support and communication networks.

Some grantees who are conducting citizenship campaigns, have, in the past, combined those efforts and resources with the INA antidiscrimination education campaigns in order to maximize the scope and breadth of the project and to reach a larger number of individuals in the targeted population. If an applicant proposes to combine these efforts, please discuss how the programs will interact and how the budgets will be administered.

Proposals should discuss the components of the campaign strategy, detail the reasons supporting the choice of each component, and explain how each component will effectively contribute to the overall objective of cost-effective dissemination of useful and accurate information to a wide audience of protected individuals or employers. Discussions of the campaign strategies and supporting rationale should be clear, concise, and based on sound evidence and reasoning.

Since there presently exists a wealth of materials for use in educating the public, applicants should include in their budget proposals the costs for distribution of materials received from OSC or from current/past OSC grantees.

To the extent that applicants believe the development of original materials particularly suited to their campaign is necessary, their proposal should articulate in detail the circumstances requiring the development of such materials. All such materials must be approved by OSC prior to production to ensure legal accuracy and proper emphasis. Proposed revisions/translations of OSC-approved materials must also be submitted for clearance. All information distributed should also identify OSC as a source of assistance, information and action, and include the correct address and telephone numbers of OSC, (including the toll-free numbers, TDD numbers) and OSC e-mail and Internet addresses.

Part III: Evaluation of the Strategy

One of the central goals of this program is determining what public education strategies are most effective and thus, should be included in future public education efforts. Therefore, it is crucial that the methods of evaluating the campaign strategy and public education materials and their results be carefully detailed. A full evaluation of a project's effectiveness is due within 60 days of the conclusion of a campaign. Interim evaluation/activity reports are due at least quarterly, or more frequently as needed throughout the grant year.

Selection Criteria

The final selection of grantees for award will be made by the Special Counsel for Immigration Related Unfair Employment Practices.

A panel made up of OSC staff will review and rate the applications and make recommendations to the Special Counsel regarding funding. The panel's results are advisory in nature and not binding on the Special Counsel. *Letters of support, endorsement, or recommendation are not part of the grant application process and will not be considered.*

In determining which applications to fund, OSC will consider the following (based on a one-hundred point scale)

1. Program Design (50 points)

Sound program design and cost-effective strategies for educating the targeted population are imperative. Consequently, areas that will be closely examined include the following:

a. Evidence of in-depth knowledge of the goals and objectives of the project. (15 points)

b. Selection and definition of the target group(s) for the campaign, and the factors that support the selection, including special needs, and the applicant's qualifications to reach effectively the target. (10 points)

c. A cost-effective campaign strategy for educating targeted employers and/or members of the protected class, with a justification for the choice of strategy, including the degree to which the campaign has prevented immigration related unfair employment practices and has reached individuals with such claims. (15 points)

d. The evaluation methods proposed by the applicant to measure the effectiveness of he campaign and their precision in indicating to what degree the campaign is successful. (10 points)

2. Administrative Capability (20 points)

Proposals will be rated in terms of the capability of the applicant to implement the targeting, public education and evaluation components of the campaign:

a. Evidence of proven ability to provide high quality results. (10 points)

b. Evidence that the applicant can implement the campaign, and complete the evaluation component within the time lines provided.

Note: OSC's experience during previous grant cycles has shown that a number of applicants choose to apply as a consortium of individual entities; or, if applying individually, propose the use of subcontractors to undertake certain limited functions. It is essential that these applicants demonstrate the proven management capability and experience to ensure that, as lead agency, they will be directly accountable for the successful implementation, completion, and evaluation of the project. (10 points)

3. Staff Capability (10 points)

Applications will be evaluated in terms of the degree to which:

a. The duties outlined for grant-funded positions appear appropriate to the work that will be conducted under the award. (5 points)

b. The qualifications of the grant-funded positions appear to match the requirements of these positions. (5 points)

Note: If the grant project manager or other member of the professional staff is to be hired later as part of the grant, or should there be any change in professional staff during the grant period, hiring is subject to review and approval by OSC at that time.

4. Previous Experience (20 points)

The proposals will be evaluated on the degree to which the applicant demonstrates that it has successfully carried out programs or work of a similar nature in the past.

Eligible Applicants

This grant competition is open to nonprofit organizations and state and local government agencies.

Grant Period and Award Amount

It is anticipated that several grants will be awarded and will range in size from $40,000 to $100,000.

Publication of this announcement does not require OSC to award any specific number of grants, or to obligate all or any part of available funds. The period of performance will be twelve months from the date of the grant award, in most cases beginning October 1, 1999.

Application Deadline

All applications must be received by 6:00 PM EDT, May 6, 1999 at the Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, 1425 New York Ave., N.W., Suite 9000, P.O. Box 27728, Washington, D.C. 20038–7728. If sent by regular first-class mail, please use the P.O. Box; if using Federal Express or priority mail, use the street address. *Applications may not be submitted via facsimile machine.*

Application Requirements

Applicants should submit an original and two (2) copies of their completed proposal by the deadline established above. All submissions must contain the following items in the order listed below:

1. A completed and signed Application for Federal Assistance (Standard Form 424) and Budget Information (Standard Form 424A).

2. OJP Form 4061/6 (Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements).

3. A Standard Form LLL (Disclosure Form to Report Lobbying).

4. An abstract of the full proposal, not to exceed one page.

5. A program narrative of not more than fifteen (15) double-spaced typed pages which includes the following:

a. A clear statement describing the approach and strategy to be utilized to complete the tasks identified in the program description;

b. A clear statement of the proposed goals and objectives, including a listing of the major events, activities, products and timetables for completion;

c. The proposed staffing plan (NOTE: If the grant project manager or other professional staff member is to be hired later as part of the grant, or should there be a change in professional staff during the grant period, hiring is subject to review and approval by OSC at that time); and

d. Description of how the project will be evaluated.

6. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and a short narrative justification of each budgeted line item cost. If an indirect cost rate is used in the budget, then a copy of a current fully executed agreement between the applicant and the cognizant Federal agency must accompany the budget. NOTE: Program budgets must include the travel, lodging and other expenses necessary for not more than two program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, DC at the beginning of the grant period (late Autumn).

7. OJP Form 7120/1 (Accounting System and Financial Capability Questionnaire).

8. Copies of resumes of the professional staff proposed in the budget.

9. Detailed technical materials that support or supplement the description of the proposed effort should be included in the appendix.

In order to facilitate handling, please do not use covers, binders or tabs.

Application forms may be obtained by writing or telephoning: Office of Special Counsel for Immigration Related Unfair Employment Practices, P.O. Box 27728, Washington, DC 20038–7728. Tel. (202) 616–5594, or (202) 616–5525 (TDD for the hearing impaired). This announcement will also appear on the World Wide Web at www.usdoj.gov/crt/osc/

Dated: March 17, 1999.

John D. Trasviña,

Special Counsel, Office of Special Counsel for Immigration, Related Unfair Employment Practices.

[FR Doc. 99–6921 Filed 3–19–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; (reinstatement, without change, of a previously approved collection for which approval has expired); Claim for death benefits.

The Department of Justice, Office of Justice Programs, Bureau of Justice Programs, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register on September 30, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until [April 21, 1999]. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsmile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via fascimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement of collection for which OMB Clearance has expired.

(2) *The title of the form/collection:* Claim for Death Benefits.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 3650/5, Bureau of Justice Assistance, Office of Justice Assistance, Office of Justice Assistance, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal, State and Local agencies. This data collection will gather information to determine the eligibility of Claim for Death Benefits for the repayment of determine the eligibility of Claim for Death Benefits for the payment of benefits.

Other: National public membership organizations.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that 320 respondents will complete a 1.2 hours per respondents will complete a 1.2 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: The total hour burden to complete the nominations is 384 the annual burden hours. If additional information is required contact: Mr. Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC

20530, or via facsmile at (202) 514–1534.

Dated: March 16, 1999.

Robert B. Briggs,

Department Deputy Clearance Office, United States Department of Justice.

[FR Doc. 99–6928 Filed 3–19–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: Notice of information collection under review; (Reinstatement, without change, of a previously approved collection for which approval has expired); Federal Law Enforcement Dependents Assistance.

The Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below.

This proposal information collection was previously published in the **Federal Register** on October 5, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until April 21, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Federal Law Enforcement Dependents Assistance.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1240/20 (9–97), Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Children and spouses of Federal civilian law enforcement officers who were killed or permanently and totally disabled in the line of duty and are seeking financial assistance for the purpose of higher education.

Other: None. This program is administered under the authority of 42 U.S.C. 3796 et. seq. to provide financial assistance in the form of awards to the children and spouses of Federal civilian law enforcement officers whose death or permanent and total disabilities in the line of duty resulted in the payment of benefits under the Public Safety Officers' Benefits (PSOB) Program. The Application Form will be completed by each eligible applicant and will provide information regarding educational experience, educational goals, and estimated cost of educational plan for verification and award processing.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 50 responses annually at 2 hours per respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* ((100)) annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530, or via facasimile at (202) 514–1534.

Dated: March 16, 1999.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–6929 Filed 3–19–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; (Reinstatement, without change, of a previously approved collection for which approval has expired) Report of Public Safety Officers'.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 5, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until April 21, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement of collection for which OMB Clearance has expired.

(2) *The title of the form/collection:* Report of Public Safety Officers' Death

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 3650/6, Bureau of Justice Assistance, Office of Justice Assistance, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal, State and Local agencies. This data collection will gather information to determine the eligibility of Report of Public Safety Officers' Death for the payment of benefits.

Other: National public membership organizations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 320 respondents will complete a 2.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the nominations is 384 the annual burden hours. If additional information is required contact: Mr. Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530, or via facsimile at (202) 514–1534.

Dated: March 16, 1999.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 99–6930 Filed 3–19–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Employment and Training Assistance for Dislocated Workers; Reallotment of Title III Funds

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor is publishing for public information the Job Training Partnership Act Title III (Employment and Training Assistance for Dislocated Workers) funds identified by States for reallotment, and the amount to be reallotted to eligible States.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Holl, Office of Worker Retraining and Adjustment Programs, Employment and Training Administration, Department of Labor, Room N–5426, 200 Constitution Avenue NW., Washington, D.C. 20210. Telephone: 202–219–5577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to Title III of the Job Training Partnership Act (JTPA or the Act), as amended by the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), the Secretary of Labor (Secretary) is required to recapture funds from States identified pursuant to section 303(b) of the Act, and reallot such funds by a Notice of Obligation (NOO) adjustment to current year funds to ''eligible States'' and ''eligible high unemployment States'', as set forth in section 303(a), (b), and (c) of JTPA. 29 U.S.C. 1653. The basic reallotment process was described in Training and Employment Guidance Letter No. 4–88, dated November 25, 1988, Subject: Reallotment and Reallocation of Funds under Title III of the Job Training Partnership Act (JTPA), as amended, 53 FR 43737 (December 2, 1988). The reallotment process for Program Year (PY) 1997 funds was described in Training and Employment Guidance Letter No. 6–97, dated April 14, 1998, Subject: Reallotment of Job Training Partnership Act (JTPA) Title III Formula-Allotted Funds.

NOO adjustments to the PY 1998 (July 1, 1998-June 30, 1999) formula allotments are being issued based on expenditures reported to the Secretary by the States, as required by the recapture and reallotment provisions at Section 303 of JTPA. 29 U.S.C. 1653.

Excess funds are recaptured from PY 1998 formula allotments, and are distributed by formula to eligible States and eligible high unemployment States, resulting in either an upward or downward adjustment to every State's PY 1998 allotment.

Unemployment Data

The unemployment data used in the formula for reallotments, relative numbers of unemployed and relative numbers of excess unemployed, were for the October 1997 through September 1998 period. Long-term unemployment data used were for calendar year 1997. The determination of ''eligible high unemployment States'' for the reallotment of excess unexpended funds was also based on unemployment data for the period October 1997 through September 1998, with all average unemployment rates rounded to the nearest tenth of one percent. The unemployment data were provided by the Bureau of Labor Statistics, based upon the Current Population Survey.

The table below displays the distribution of the net changes to PY 1998 formula allotments.

BILLING CODE 4510–30–M

U.S. DEPARTMENT OF LABOR
Employment and Training Administration
PY 1998 JTPA Title III Reallotment to States

	COL 1	COL 2	COL 3	COL 4	COL 5	COL 6
Alabama	4.1	0	48,683	0	15,948	15,948
Alaska	6.4	0	25,766	25,766	8,441	34,207
Arizona	4.1	0	40,411	0	13,238	13,238
Arkansas	5.1	0	46,473	46,473	15,224	61,697
California	5.9	0	1,076,614	1,076,614	352,691	1,429,305
Colorado	3.2	0	28,068	0	9,195	9,195
Connecticut	4.0	0	43,619	0	14,289	14,289
Delaware	3.6	0	7,450	0	2,440	2,440
District of Columbia	8.5	1,036,152	0	0	0	(1,036,152)
Florida	4.5	3,463,323	0	0	0	(3,463,323)
Georgia	4.1	0	74,613	0	24,443	24,443
Hawaii	5.8	0	39,231	39,231	12,852	52,083
Idaho	5.0	0	21,976	21,976	7,199	29,175
Illinois	4.5	0	146,079	0	47,854	47,854
Indiana	3.1	0	43,063	0	14,107	14,107
Iowa	2.6	0	19,822	0	6,494	6,494
Kansas	3.6	0	21,998	0	7,206	7,206
Kentucky	4.4	0	43,360	0	14,204	14,204
Louisiana	5.5	49	0	0	0	(49)
Maine	4.6	0	17,595	0	5,764	5,764
Maryland	4.7	0	84,926	84,926	27,821	112,747
Massachusetts	3.5	0	57,977	0	18,993	18,993
Michigan	3.8	0	92,000	0	30,138	30,138
Minnesota	2.7	0	36,518	0	11,963	11,963
Mississippi	5.3	0	60,431	60,431	19,797	80,228
Missouri	4.1	0	59,659	0	19,544	19,544
Montana	5.3	0	20,820	20,820	6,820	27,640
Nebraska	2.0	0	8,600	0	2,817	2,817
Nevada	4.3	0	16,842	0	5,517	5,517
New Hampshire	2.7	0	6,822	0	2,235	2,235
New Jersey	4.9	0	155,387	155,387	50,904	206,291
New Mexico	6.3	0	61,451	61,451	20,131	81,582
New York	5.8	0	603,176	603,176	197,596	800,772
North Carolina	3.5	0	61,814	0	20,250	20,250
North Dakota	2.1	0	3,407	0	1,116	1,116
Ohio	4.3	0	121,204	0	39,705	39,705
Oklahoma	3.9	0	29,629	0	9,706	9,706
Oregon	5.3	0	75,379	75,379	24,693	100,072
Pennsylvania	4.6	0	157,077	0	51,457	51,457
Puerto Rico	13.5	0	348,657	348,657	114,217	462,874
Rhode Island	4.8	0	16,509	16,509	5,408	21,917
South Carolina	3.4	0	35,139	0	11,511	11,511
South Dakota	2.7	0	4,250	0	1,392	1,392
Tennessee	4.5	0	60,795	0	19,916	19,916
Texas	4.9	0	320,299	320,299	104,928	425,227
Utah	3.1	0	13,911	0	4,557	4,557
Vermont	3.5	0	5,990	0	1,962	1,962
Virginia	3.2	0	59,716	0	19,562	19,562
Washington	4.5	0	59,886	0	19,618	19,618
West Virginia	6.6	0	68,424	68,424	22,415	90,839
Wisconsin	3.1	0	42,823	0	14,028	14,028
Wyoming	4.4	0	5,185	0	1,699	1,699
NATIONAL TOTAL	4.6	4,499,524	4,499,524	3,025,519	1,474,005	0

COLUMN 1	Unemployment rate for 12 month period
COLUMN 2	Amount of funds subject to recapture
COLUMN 3	Initial distribution of total recaptured dollars among all "eligible" States
COLUMN 4	Step 1: For "eligible high unemployment" States, amount equal to Column 3
COLUMN 5	Step 2: Remaining dollars distributed to all "eligible" States
COLUMN 6	Total: Column 4 (Step 1) + Column 5 (Step 2) less Column 2 (recaptured amount)

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Explanation of Table

Column 1: This column shows each State's unemployment rate for the twelve months ending September 1998.

Column 2: This column shows the amount of excess funds which are subject to recapture. PY 1998 funds in an amount equal to the excess of funds identified will be recaptured from such State and distributed as discussed below.

Column 3: This column shows total excess funds initially distributed among all ''eligible States'' by applying the regular Title III formula. ''Eligible States'' are those with unexpended PY 1997 funds at or below the level of 20 percent of their PY 1997 formula allotments as described above.

Column 4: Eligible States with unemployment rates higher than the national average, which was 4.6 percent for the 12-month period, are ''eligible high unemployment States.'' These eligible high unemployment States received amounts equal to their share of the excess funds (the amounts shown in column 3) according to the regular Title III formula. This is Step 1 of the reallotment process. These amounts are shown in column 4 and total $3,025,519.

Column 5: The sum of the remaining shares of available funds ($1,474,005) is distributed among all eligible States, again using the regular Title III allotment formula. This is Step 2 of the reallotment process. These amounts are shown in column 5.

Column 6: Net changes in PY 1998 formula allotment are presented. This column represents the decreases in Title III funds shown in column 2, and the increases in Title III funds shown in columns 4 and 5. NOOs in the amounts shown in column 6 are being issued to the States listed.

Equitable Procedures

Pursuant to section 303(d) of the Act, Governors of States required to make funds available for reallotment shall prescribe equitable procedures for making funds available from the State and substate grantees. 29 U.S.C. 1653(d).

Distribution of Funds

Funds are being reallotted by the Secretary in accordance with section 303(a), (b), and (c) of the Act, using the factors described in section 302(b) of the Act. 29 U.S.C. 1652(b) and 1653(a), (b), and (c). Distribution within States of funds allotted to States shall be in accordance with section 302(c) and (d) of the Act (29 U.S.C. 1652(c) and (d)), and the JTPA regulation at 20 CFR 631.12(d).

Signed at Washington, D.C., this 5th day of March, 1999.

Raymond Bramucci,

Assistant Secretary of Labor.

[FR Doc. 99–6859 Filed 3–19–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the the following proposed extension collections: (1) Regulations, 29 CFR Part 825, The Family and Medical Leave Act of 1993; and (2) Notice of Recurrence of Disability and Claim for Continuance of Pay/Compensation (Form CA–2a). A copy of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 25, 1999. The Department of Labor 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 assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Ms. Patricial A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

Regulations, 29 CFR Part 825, The Family and Medical Leave Act of 1993 (WH–380 and WH–381)

I. Background

The Family and Medical Leave Act of 1993 (FMLA) requires private section employers of 50 or more employees, and public agencies, to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for certain family and medical reasons. Records are required so that the Department of Labor can determine employer compliance with FMLA.

II. Current Actions

The Department of Labor seeks an extension of approval to collect this information in order to carry out its statutory obligation under FMLA to investigate and ensure employer compliance with the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: 29 CFR Part 825, The Family and Medical Leave Act of 1993.

OMB Number: 1215–0181.

Agency Number: WH–380 and WH–381.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal government.

Total Respondents: 3.9 million.

Frequency: Recordkeeping; Reporting on occasion.

Total Responses: 9.1425 million.

Time per Response: 1 minute to 10 minutes.

Estimated Total Burden Hours: 645,625.

Total Burden Cost (capital/startup): $ 0.

Total Burden Cost (operating/maintenance): $ 0.

Notice of Recurrence of Disability and Claim for Continuation of Pay/Compensation (CA–2a)

I. Background

The CA–2a is a form used by current, or occasionally former Federal

employees, to claim wage loss or medical treatment resulting from a recurrence of a work-related injury while Federally employed. The form is required of the public, and thus subject to the Paperwork Reduction Act of 1995, in cases where the claimant has left Federal employment at the time of a claimed recurrence. The information is necessary to ensure accurate benefit payments.

II. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to determine whether a claimant has suffered a recurrence of disability related to an accepted injury, and, if so, the amount of benefits payable.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Notice of Recurrence of Disability and Claim for continuation Pay/Compensation.

OMB Number: 1215–0167.

Agency Number: CA–2a.

Affected Public: Individuals or households.

Total Respondents: 550.

Frequency: As needed.

Total Responses: 550.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 275.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $198.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 16, 1999.

Eleanor Smith,

Deputy Director, Office of Management, Administration and Planning Employment Standards Administration.

[FR Doc. 99–6860 Filed 3–19–99; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Wage and Hour Division

[Administrative Order No. 664]

Special Industry Committee for All Industries in American Samoa; Appointment; Convention; Hearing

1. Pursuant to sections 5 and 6(a)(3) of the Fair Labor Standards Act (FLSA) of 1938, as amended (29 U.S.C. 205, 206(a)(3)), and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004) and 29 CFR Part 511, I hereby appoint special Industry Committee No. 23 for American Samoa.

2. Pursuant to sections 5, 6(a)(3) and 8 of FLSA, as amended (29 U.S.C. 205, 206(a)(3), and 208), reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and 29 CFR Part 511, I hereby:

(a) Convene the above-appointed industry committee;

(b) Refer to the industry committee the question of the minimum rate or rates for all industries in American Samoa to be paid under section 6(a)(3) of the FLSA, as amended; and,

(c) Give notice of the hearing to be held by the committee at the time and place indicated.

The industry committee shall investigate conditions in such industries, and the committee, or any authorized subcommittee thereof, shall hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under the FLSA.

The committee shall meet in executive session to commence its investigation at 9:00 a.m. and begin its public hearing at 11:00 a.m. on June 7, 1999, in Pago Pago, American Samoa.

3. The rate or rates recommended by the committee shall not exceed the rate prescribed by section 6(a) or 6(b) of the FLSA, as amended by the Fair Labor Standards Amendments of 1996, of $5.15 an hour effective September 1, 1997.

The committee shall recommend to the Administrator of the Wage and Hour Division of the Department of Labor the highest minimum rate or rates of wages for such industries that it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in such industries, and will not give any industry in American Samoa a competitive advantage over any industry in the United States outside of American Samoa.

4. Where the committee finds that a higher minimum wage may be determined for employees engaged in certain activities or in the manufacture of certain products in the industry than may be determined for other employees in the industry, the committee shall recommend such reasonable classifications within the industry as it determines to be necessary for the purpose of fixing for each classification the highest minimum wage rate that can be determined for it under the principles set forth herein and in 29 CFR Part 511.10, that will not substantially curtail employment in such classification and will not give a competitive advantage to any group in the industry. No classification shall be made, however, and no minimum wage rate shall be fixed solely on a regional basis or on the basis of age or sex. In determining whether there should be classifications within an industry, in making such classifications, and in determining the minimum wage rates for such classifications, the committee shall consider, among other relevant factors, the following:

(a) Competitive conditions as affected by transportation, living, and production costs;

(b) Wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(c) Wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

5. Prior to the hearing, the Administrator of the Wage and Hour Division, U.S. Department of Labor, shall prepare an economic report containing the information that has been assembled pertinent to the matters referred to the committee. Copies of this report may be obtained at the Office of the Governor, Pago Pago, American Samoa, and the National Office of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. Upon request, the Wage and Hour Division will mail copies to interested persons who make written request to the Wage and Hour Division. To facilitate mailing, such persons should make advance written request to the Wage and Hour Division. The committee will take official notice of the facts stated in this report. Parties, however, shall be afforded an opportunity to refute such facts by evidence received at the hearing.

6. The provisions of Title 29, Code of Federal Regulations, Part 511, will govern the procedure of this industry committee. Copies of this part of the regulations will be available at the Office of the Governor, Pago Pago, American Samoa, and at the National Office of the Wage and Hour Division. The proceedings will be conducted in English but in the event a witness should wish to testify in Samoan, an interpreter will be provided. As a prerequisite to participation as a party, interested persons shall file six copies of a pre-hearing statement at the aforementioned Office of the Governor of American Samoa and six copies at the National Office of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. Each pre-

hearing statement shall contain the data specified in 29 CFR 511.8 of the regulations and shall be filed not later than May 15, 1999. If such statements are sent by airmail between American Samoa and the mainland, such filing shall be deemed timely if postmarked within the time provided.

Signed at Washington, DC this 16th day of March 1999.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 99–6861 Filed 3–19–99; 8:45 am]

BILLING CODE 4510–27–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Test Plan of Nuclear Regulatory Commission Pursuant to the Federal Acquisition Streamlining Act of 1994

AGENCY: Office of Federal Procurement Policy (OFPP), OMB.

ACTION: Notice of test plan submitted by the Nuclear Regulatory Commission (NRC) under the authority of section 5061 of the Federal Acquisition Streamlining Act of 1994 (FASA).

SUMMARY: Section 5061 of FASA allows the Administrator of OFPP to test alternative and innovative procurement procedures at up to six agencies. The total estimated life cycle cost for each test may not exceed $100,000,000. NRC has submitted a plan pursuant to section 5061 to test a focused source selection procedure. The test entails a phased process beginning with a streamlined procedure for identifying the most competitive sources, followed by a proposal development and evaluation effort involving the three most promising sources. NRC's test further involves an intense negotiation process where efforts to reach agreement are prioritized based on the strength of the offerors' proposals.

Widespread public notice will be provided to announce each acquisition conducted pursuant to this test. All interested parties will be permitted to participate in the initial phase of any such acquisition. Each contract awarded pursuant to this test will not exceed $5 million in total value.

EFFECTIVE DATE: The test will begin on December 17, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Hopkins, Contract Policy Analyst, Division of Contracts and Property Management, U.S. Nuclear Regulatory Commission, Mail Stop T7I2, Washington, DC 20555; E-Mail: sbh@nrc.gov; Telephone: 301–415–6514.

SUPPLEMENTARY INFORMATION: OFPP has authority under FASA section 5061 to conduct additional test programs. Agencies interested in participating in a test program should contact Mr. Nathan Tash, Deputy Associate Administrator for Procurement Innovation, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503; E-Mail: ntash@omb.eop.gov; Telephone: 202–395–6167.

Dated: March 15, 1999.

Deidre A. Lee,

Administrator.

Attachment

U.S. Nuclear Regulatory Commission Innovation Test Plan for Focused Source Selection Procedures (Federal Acquisition Streamlining Act Section 5061)

I. Summary of the Test

The Nuclear Regulatory Commission (NRC) proposes to test a focused source selection procedure under the FASA test authority. The procedure has three primary components. The first component entails a streamlined process for obtaining comments through the Internet on draft statements of work and identifying the most promising interested sources. The second involves a proposal development and evaluation effort involving the three most highly rated sources. The third component involves an intense negotiation process where the focus is prioritized based on the ranking of the offerors. The efficiency of many of these processes will be further enhanced through the use of electronic commerce (EC).

For selected acquisitions, NRC will solicit capability statements from all interested sources and then request full proposals only from the three sources rated most highly based on the capability statements. NRC will employ the Internet to issue notices, draft statements of work (SOW) and requests for proposals, as well as to receive responses from offerors that can provide such electronically. NRC will negotiate solely with the highest ranked offeror and will conduct negotiations with the second ranked offeror only if agreement cannot be reached with the highest ranked offeror. Similarly, negotiations with the third ranked offeror will take place only if agreement cannot be reached with either of the two higher ranked offerors. To maintain competitive pressure, NRC would reserve the right to reopen negotiations with any of the three offerors after having tried to negotiate a contract with each of them.

By initiating competitions without the submission of formal proposals, NRC believes it will be able to reduce the burden (both on the government and interested sources) typically assoicated with initially determining which sources are the most competitive. Because the down select would be mandatory, NRC believes this initial screening process will be more effective than the advisory, multi-step process currently authorized by FAR Part 15. NRC further believes that the three sources selected to compete further will have a strong incentive to perform ''due diligence'' to learn about agency needs, to develop more innovative high value solutions that can better fit with those needs, and to offer stronger proposals.

NRC appreciates the benefits of competition generated by simultaneous negotiations among the most highly rated offerors. At the same time, NRC believes it may also be possible to obtain good deals more efficiently and effectively by prioritizing the focus of its negotiation efforts based on the ranking of these offerors. In most cases, NRC anticipates that it will be able to reach agreement with the top ranked offeror without having to undertake further effort. The test will offer NRC an opportunity to examine if and when negotiating in a successive (versus simultaneous) manner may result in an effective use of those resources dedicated to contract negotiations.

II. Scope of the Test

The Division of Contracts and Property Management, Headquarters, NRC will use focused source selection techniques to procure goods and services, in the NRC's administrative program area. NRC decided to focus on the administrative program area because NRC has not had the same level of success applying existing streamlining measures to administrative service requirements as it has to other program areas.

NRC will review procurement plans for Fiscal Year 2000 to determine which procurements may be candidates for use of the innovation. Among the considerations NRC will use in selecting procurements for the test, NRC will consider the complexity of procurements and whether they involve high proposal preparation cost that discourage capable sources from participating. A project team of procurement policy and operations staff from the Division of Contracts and Property Management (DCPM), including those who participated in the development of the innovation, will

make the initial review. Those procurements which are recommended for the test program will be discussed in early planning meetings with representatives from contracting, the requiring technical offices, budget, and the NRC's Office of Small Business and Civil Rights. The contracting officer will make the final selection of the procurements for the test program.

III. Acquisition Strategy for the Test (Including a Description of (a) How Procedures Under the Test Will Differ From Those Currently Used and (b) the Activities Anticipated in the Various Phases of the Acquisition Cycle Affected by the Test—e.g., Acquisition Planning, Presolicitation, Solicitation, Evaluation, Award, Administration)

• Soliciting and Making an Initial Assessment of Interested Sources

Current process. Today, NRC publicizes notices of contracting opportunities in the Commerce Business Daily (CBD) and invites interested sources to obtain solicitations and submit proposals. Offeror submissions, which include full cost and technical proposals, are then evaluated by NRC to determine initially which sources are the most competitive. For acquisitions of non-commercial administrative services (e.g., research and development services), solicitations are issued after a waiting period of 15 days. If the acquisition is in excess of the simplified acquisition threshold, the solicitation will provide a response time of not less than 30 days.

NRC has come to realize that there is great time and cost involved in making an initial assessment of leading contenders based on full cost and technical proposals. The multi-step selection process set forth in the revised FAR Part 15 provides a helpful means for agencies to reduce the burden associated with conducting initial screenings (i.e., by requiring interested sources to limit their initial submission to information on capabilities, experience, past performance, and any additional area specified by the contracting officer). However, Part 15 still permits a less competitive source to require the agency to review a full proposal. This can be burdensome and inefficient (for both parties).

Test process. Under the test, the NRC will still provide widespread notice of its contracting opportunities. NRC will issue an abbreviated notice with basic information about the planned procurement, make available a draft SOW, request interested parties to provide capability statements (e.g., past performance information and resumes) and invite comments on the draft SOW. The posting will include simplified criteria to be used by NRC to evaluate responses.

Specifically, interested parties will be required to provide the following information:

(1) Name and address of company.
(2) Name, title, Internet address, telephone and fax numbers of person providing information, and person authorizing submission of information for the firm.
(3) EIN/TIN number.
(4) Qualifications of proposed personnel.
(5) List of (usually up to five) contracts performed by the organizational unit of the firm/individual which is proposed to perform the subject work for the NRC that are relevant to the proposed NRC work. Interested parties will be asked to include:
  a. contract number
  b. brief description of the project
  c. two contacts at the organization which awarded each contract
(6) Conceptual approach to performing the work.
(7) Additional information as necessary (e.g., conflict of interest, type of software license).

Interested parties will be informed that their total response excluding qualifications of proposed personnel, must not exceed text which would fill five 8½×11 inch pages in WordPerfect or ASCII, in no smaller than 10-point print. Oral presentations may be used in lieu of written responses.

Because less detailed information is being sought, NRC will permit response times as few as 15 days (rather than the 30 days typically required for non-commercial goods and services above the SAT). A longer period may be authorized by the NRC contracting officer, if warranted.

NRC will score each response based upon an evaluation of past experience of the firm and proposed personnel in performing the same or similar work. Only the three top ranked responses will be permitted to proceed further in the competition. Those excluded from further participation will save the wasted effort of developing proposals that would not likely be selected. This process also should encourage more participation by firms that have successfully performed in the private sector, but because of the high cost, have not previously chosen to compete for government contracts. NRC will save the time spent evaluating detailed proposals when a simpler submission could effectively permit the government to select those sources that are likely to submit the most competitive offers.

NRC recognizes the growing benefit EC offers to improve the ease, efficiency, and effectiveness of interactions between NRC and its vendors.

Like other agencies, NRC has been making its notices of open market contract opportunities above $25,000, that would otherwise be published in the paper version of the CBD, available to the public free-of-charge through ''CBDNet.'' Under the test, NRC will make its abbreviated notices available through CBDNet. In addition, simultaneous to the publication of these notices, NRC will post the draft SOW on the ''Contracting with the NRC'' Internet site. This posting will include a ''Summary Sheet for Solicitations'' with basic information about the planned procurement and criteria for evaluating offeror's capabilities. (As a general matter, the Internet site will provide ''help and information'' including an explanation of the test procedures and a glossary of terms.) Interested firms will be invited to submit responses via the Internet, facsimile or in hard copy. Because interested parties will be able to access a draft SOW electronically through the NRC's Internet homepage at the same time the CBDNet notice is posted, the 15-day waiting period described above will be eliminated.

NRC is aware that a pilot effort is under way to test an electronic posting system (EPS) that would distribute acquisition-related information to industry more quickly and economically. That system is designed to permit buyers to post solicitations and other pertinent information, in addition to notices, directly to the Internet, thus giving sellers access to this information through a single, government-wide point of entry. NRC will consider migrating to EPS during the test if it determines that EPS is capable of providing efficient and effective access to acquisition-related information.

• Issuance of Request for Proposals (RFPs), Proposal Submission, and Evaluation

Current process. As noted above, all interested sources are offered an opportunity to submit cost and technical proposals. This is also true under the advisory, multi-step process currently authorized by FAR Part 15.

Test process. Only the three top ranked respondents will be provided an RFP (which will include the final SOW and all applicable terms and conditions). The RFP will give each of these firms an opportunity to submit a technical and cost proposal. The NRC

will score and rank these three responses using the evaluation criteria that were included in the initial posting on the Internet.

Because only three sources will be offered the opportunity to submit proposals, NRC believes these scores will have a strong incentive to perform ''due diligence'' to work with NRC's integrated product team, end-users, and others to learn about agency needs, to more effectively and efficiently develop high value solutions that can better fit with those needs, and to offer stronger proposals.

- Negotiation and Award

Current process. Currently, if discussions are to be conducted, a competitive range is established comprised of all of the most highly rated proposals. Discussions are conducted by the contracting officer with each offeror within the competitive range. The discussions are tailored to each offeror's proposal.

Test process. NRC will negotiate with the offeror ranked highest based on an integrated cost/technical assessment. If both parties are unable to reach agreement, NRC may end negotiations with that firm and begin negotiations with the next highest ranked firm. The NRC may re-open negotiations with one or more firms if agreement cannot be reached with one of the next highest ranked firms. If agreement cannot be reached with any of the three firms, the solicitation will be canceled.

NRC recognizes that the recent rewrite of FAR Part 15 will better focus the government's resources on obtaining the best value through a more intensive negotiation process with those that are the most highly rated. However, NRC believes it may also be possible to obtain good deals by focusing its negotiation efforts on one offeror at a time, beginning with the highest technically qualified offeror—trying to reach agreement with that offeror. To maintain competitive pressure, NRC would reserve the right to reopen negotiations with any of the three offerors after having tried to negotiate a contract with each of them. If agreement can be reached with the top ranked offeror without having to undertake further negotiation, as NRC anticipate will often be the case, NRC believes it may save time and administrative expense in the negotiation process without sacrifices to the value received under the contract. The test will offer NRC an opportunity to examine if and when negotiating in this successive (versus simultaneous) manner may hold benefit. For comparative purposes, NRC may also conduct, where appropriate, simultaneous discussions with the three highest ranked offerors for selected procurements.

IV. Test Objectives and Metrics

NRC expects to achieve time savings, cost savings, and increased customer satisfaction through use of its focused source selection procedures.

Time savings. Time savings will be measured by comparing overall procurement acquisition lead times (i.e., the time that elapses from the point when the procurement request is received in the procurement office to the time of award) experienced prior to the test versus under the test for similarly scoped acquisitions. If practicable, NRC will attempt to identify time savings associated with key phases of the test (e.g., identification of the three top ranked offerors, conduct of negotiations).

Cost savings. Value received under contracts awarded under the test will be compared to the value received under similarly scoped contracts awarded prior to commencement of the test. Where a close match does not exist, a comparison of individual categories of work and cost elements will be made where feasible.

Customer satisfaction. A customer service survey will be used to measure customers' (i.e., program offices') satisfaction. NRC is currently developing a survey for general use. This survey will be reviewed to determine if it is suitable for the test or needs to be modified. In addition, NRC will survey participating organizations to obtain their feedback.

Small business participation. Participation by small businesses in test procurements will be compared with small business participation in similar procurements conducted prior to the test innovation. Participation will be measured by evaluating the value of prime contract awards.

V. A List of Regulations, Including Those Required by Law, for Which a Waiver is Necessary for the Successful Completion of the Test Program

NRC seeks to waive the following regulatory requirements.

1. For those cases where non-commercial contracts will result, the time standards set forth in Federal Acquisition Regulation (FAR) 5.203, which implements the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)(3)) and the Small Business Act (15 U.S.C. 637(e)(3)) in order to waive the 15-day period and structure a process which allows for flexible deadlines for preparation and submission of materials by interested parties.

2. FAR 5.207(c)(2)(xv), which implements the Office of Federal Procurement Policy Act (41 U.S.C. 416(b)(4)) and the Small Business Act (15 U.S.C. 637(f)(4)) which requires that Commerce Business Daily notices include a statement that, ''all responsible sources may submit a bid, proposal, or quotation (as appropriate) which shall be considered by the agency.''

3. FAR 6.003, which defines ''full and open competition'' to mean that all responsible sources are permitted to compete, implementing the Office of Federal Procurement Policy Act (41 U.S.C. 403(6)), and FAR 6.101, implementing the policy of full and open competition set forth in the Federal Property and Administrative Procedures Act (41 U.S.C. 253).

4. FAR 15.306(d), which requires negotiations with all offerors in the competitive range implementing the Federal Property and Administrative Procedures Act (41 U.S.C. 253b(d)(1)(A)).

5. FAR 15.306(c) which effectively requires consideration of cost in making down select decisions.

VI. Anticipated Impact on Small Businesses, Particularly Small Disadvantaged Businesses (Including a Description of Actions To Be Taken To Mitigate Any Anticipated Negative Impacts)

Small businesses may better be able to compete because they will have an opportunity to comment on the SOW, and they will not have to expend large amounts of resources to determine if they are among the three most highly ranked offerors. The NRC will continue to set aside procurements exclusively for small businesses when conditions permit after consultation with the NRC Office of Small and Disadvantaged Business Utilization.

[FR Doc. 99–6854 Filed 3–19–99; 8:45 am]
BILLING CODE 3110–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 030–05980]

Consideration of License Amendment for Decommissioning the Safety Light Corporation Site in Bloomsburg, PA, and Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of license amendment for decommissioning the Safety Light Corporation Site in Bloomsburg, Pennsylvania, and Opportunity for a Hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission is considering issuance of a license amendment to Nuclear Materials License No. 37–00030–02, issued to Safety Light Corporation, to authorize decommissioning of facilities, equipment, and land at the Bloomsburg site which were utilized for previous operations involving radioactive material.

FOR FURTHER INFORMATION CONTACT: James Kottan, Nuclear Regulatory Commission, Region I, King of Prussia, PA 19406–1415, telephone 610–337–5214.

SUPPLEMENTARY INFORMATION: On November 5,1998, the licensee submitted a site decommissioning plan (SDP) to NRC for review that summarized the decommissioning activities that will be undertaken to remediate the buildings, soil, and underground silos contaminated with radioactive material from past operations. The NRC staff is reviewing the SDP and is considering approval of task-specific amendments to the license which would authorize conduct of limited site decommissioning and decontamination to achieve a systematic reduction of the radioactive source term. Safety Light Corporation has two licenses for the Bloomsburg site. Licensee No. 37–00030–02 authorizes possession and use of byproduct material for site characterization and decommissioning of facilities, equipment, and land from past operations. License No. 37–00030–08 authorizes manufacture of certain devices containing tritium as well as research and development activities. Because the licensee is currently conducting operations at the site under License No. 37–00030–08, SLC is not requesting license termination nor release of the site for unrestricted use.

The NRC will require the licensee to remediate the Bloomsburg facility to meet NRC's decommissioning criteria, and during the decommissioning activities, to maintain effluents and doses within NRC requirements and as low as reasonably achievable.

Prior to approving the license amendments to implement the SDP, NRC will have made findings required by the Atomic Energy Act of 1954 as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report. Approval of the SDP will be documented in an amendment to License No. 37–00030–02.

The NRC hereby provides notice that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings'', of NRC's rules and practices for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

1. By delivery to the Docketing and Service Branch of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's area of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally, or by mail to:

1. The applicant, Safety Light Corporation, 4150–A Old Berwick Road, Bloomsburg, PA 17815 Attention: Mr. Larry Harmon; and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the SDP is available for inspection at the NRC's Public Document Room, 2120 L Street NW, Washington, DC 20555, or at NRC's Region I offices located at 475 Allendale Road, King of Prussia, PA. Persons desiring to review documents at the Region I Office should call Ms. Sheryl Villar at (610) 337–5239 several days in advance to assure that the documents will be readily available for review.

Dated at King of Prussia, Pennsylvania, this 10th day of March 1999.

For the Nuclear Regulatory Commission.

George Pangburn,

Director, Division of Nuclear Materials Safety, Region I.

[FR Doc. 99–6908 Filed 3–19–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–20]

U.S. Department of Energy, Idaho Operations Office; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Exemption From Certain Regulatory Requirements of 10 CFR Part 72

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of exemptions, pursuant to 10 CFR 72.7, from the requirements of 10 CFR 72.82(e) and 72.124(b) to the U.S. Department of Energy, Idaho Operations Office (DOE–ID or applicant). Exemption from 10 CFR 72.82(e) would release DOE–ID from the requirements to submit a preoperational test acceptance criteria and test report prior to the receipt of spent fuel at its proposed Independent Spent Fuel Storage Installation (ISFSI). Exemption from 10 CFR 72.124(b) would provide relief to DOE–ID from the requirement to verify the continued efficacy of neutron absorbing materials. The proposed ISFSI is to be located at the Idaho National Engineering and Environmental Laboratory (INEEL), within the Idaho Nuclear Technology and Engineering Center (INTEC) site in Scoville, Idaho . The proposed ISFSI would store the spent nuclear fuel debris created as a result of the Three Mile Island Unit 2 (TMI–2) accident.

Environmental Assessment (EA)

Identification of Proposed Action

The applicant is seeking Commission approval to construct and operate an ISFSI at INTEC. INTEC is an existing facility initially constructed to both store and reprocess spent fuel and high-level waste possessed by DOE. Pursuant to 10 CFR part 72, DOE–ID submitted an application, including a Safety Analysis Report (SAR), for the ISFSI by letter

dated October 31, 1996, as supplemented. NRC staff is currently performing a review of that application. On February 12, 1999, DOE–ID requested an exemption from the requirement of 10 CFR 72.82(e) to submit a report of the preoperational test acceptance criteria and test results at least 30 days prior to the receipt of spent fuel or high-level radioactive waste. The staff is considering granting DOE–ID's request.

On its own initiative, the staff is also considering issuance of an exemption from the requirement of 10 CFR 72.124(b) which states: ''When practicable the design of an ISFSI or MRS must be based on favorable geometry, permanently fixed neutron absorbing materials (poisons), or both. Where solid neutron absorbing materials are used, the design shall provide for positive means to verify their continued efficacy.'' Specifically, the staff is considering granting an exemption from the requirement to provide positive means of verifying the continued efficacy of neutron absorbing materials.

The proposed action before the Commission is whether to grant these two exemptions pursuant to 10 CFR 72.7.

Need for the Proposed Action

The applicant is preparing to build and operate the TMI–2 ISFSI as described in its application and SAR, subject to approval of the pending licensing application. The exemption from 10 CFR 72.82(e) is necessary because DOE is preparing to transfer the spent nuclear fuel from its current location at the Test Area North (TAN) facility to the INTEC facility, immediately following the completion of the preoperational testing.

The exemption from 10 CFR 72.124(b) is necessary because, while this requirement is appropriate for wet spent fuel storage systems, it is not appropriate for dry spent fuel storage systems such as the one DOE–ID plans to use for storage of the TMI–2 fuel debris. Periodic verification of neutron poison effectiveness is neither necessary nor practical for these casks.

Environmental Impacts of the Proposed Action

Section 72.82(e) currently requires that a Part 72 licensee submit to NRC a report of preoperational test acceptance criteria and test results at least 30 days before the receipt of spent fuel into an ISFSI. As part of the review of the applicant's SAR, the staff determined that the scope of the preoperational testing was adequately described. In addition, the staff will be on site during the preoperational testing to both observe and conduct inspections. This allows the staff to conduct a direct observation and independent evaluation as to whether the applicant has developed, implemented, and evaluated preoperational testing activities. Therefore, the reports required by 10 CFR 72.82(e) are not necessary to provide a hold-period for NRC staff review. Further, on September 14, 1998, the Commission issued a proposed rule (63 FR 49046) to eliminate 10 CFR 72.82(e). Applicants for a license are currently required to submit information on a preoperational test program as part of an SAR. The Commission's current practice is to maintain an extensive oversight (i.e., inspection) presence during the preoperational testing phase of the ISFSI; reviewing the acceptance criteria, preoperational test, and test results as they occur. In the proposed rule, the Commission states that it believes neither the report nor the 30-day hold period are needed for regulatory purposes and taking this action will relieve licensees from an unnecessary regulatory burden. A final rule to remove this regulation has not yet been issued by the Commission.

Section 72.124(b) currently requires that where the design of an ISFSI uses solid neutron absorbing material as a method of criticality control, the design of the ISFSI shall provide a positive means to verify the continued efficacy of the absorbing material. On June 9, 1998, the Commission issued a proposed rule (63 FR 31364) to revise 10 CFR 72.124(b). The Commission proposed that for dry spent fuel storage systems, the continued efficacy of neutron absorbing material may be confirmed by a demonstration and analysis before use, showing that significant degradation of the material cannot occur over the life of the facility. The Commission stated in the proposed rule that the potentially corrosive environment under wet storage conditions is not present in dry storage systems because an inert environment is maintained. Under these conditions, there is no mechanism to significantly degrade the neutron absorbing material. Consequently, a positive means for verifying the continued efficacy of the material is not required. A final rule to revise this regulation has not yet been issued by the Commission.

The review of the applicant's SAR showed that credit was taken for only 75% of the original neutron absorbing material being present and that the neutron flux produced by the spent nuclear fuel would deplete only a small percentage of neutron absorbing material during several thousand years of exposure; a time period that is well beyond the expected life of this facility. The neutron absorbing material (poison) is in a form that exposure to the ambient atmosphere of the DSC interior will not cause a significant deterioration of the structural properties of the material over the expected life of the facility.

Alternative to the Proposed Action

Since there are no significant environmental impacts associated with either of the proposed actions, any alternatives with equal or greater environmental impacts are not evaluated. The alternative to the proposed actions would be to: (a) Deny approval of the 10 CFR 72.82(e) exemption, and require the report of preoperational test acceptance criteria and test results at least 30 days before the receipt of spent fuel into an ISFSI and (b) deny approval of the 10 CFR 72.124(b) exemption and, therefore, not allow elimination of the requirement to verify the continued efficacy of neutron absorbing materials. These alternatives would have the same or greater environmental impacts.

Agencies and Persons Consulted

On March 1, 1999, Mr. Alan Merritt of the State of Idaho, INEEL Oversight Program, was contacted about the EA for the proposed actions and had no concerns.

Finding of No Significant Impact

The environmental impacts of the proposed actions have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting exemptions from 10 CFR 72.82(e) and 10 CFR 72.124(b) will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

This application was docketed under 10 CFR part 72, Docket 72–20. For further details with respect to this action, see the application for an ISFSI license dated October 31, 1996, as supplemented, and the request for exemption dated February 12, 1999, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555 and at the Local Public Document Room at the INEEL Technical Library, 1776 Science Center Drive, Idaho Falls, ID 83402.

Dated at Rockville, Maryland, this 13th day of March 1999.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–6905 Filed 3–19–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–20]

Department of Energy, Idaho Operations Office; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Exemption From Certain Regulatory Requirements of 10 CFR Part 72

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the requirements of 10 CFR 72.102(f)(1) to the U.S. Department of Energy, Idaho Operations Office (DOE–ID or applicant). Exemption from 10 CFR 72.102(f)(1) would relieve DOE-ID from the requirements to use a design earthquake (DE) ground motion equivalent to that of a safe shutdown earthquake (SSE) for a nuclear power plant, as evaluated by the methods of Appendix A of Part 100 for its proposed Independent Spent Fuel Storage Installation (ISFSI). The proposed ISFSI is to be located at the Idaho National Engineering and Environmental Laboratory (INEEL), within the Idaho Nuclear Technology and Engineering Center (INTEC) site in Scoville, Idaho. The proposed ISFSI would store the spent nuclear fuel debris created as a result of the Three Mile Island Unit 2 (TMI–2) accident.

Environmental Assessment (EA)

Identification of Proposed Action

The applicant is seeking Commission approval to construct and operate an ISFSI at INTEC. INTEC is an existing facility initially constructed to both store and reprocess spent fuel and high-level waste possessed by DOE. Pursuant to 10 CFR part 72, DOE–ID submitted an application, including a Safety Analysis Report (SAR), for the ISFSI, by letter dated October 31, 1996, as supplemented. NRC staff is currently performing a review of that application. On September 15, 1997, DOE–ID requested an exemption from the requirement of 10 CFR 72.102(f)(1) which states: ''For sites that have been evaluated under the criteria of appendix A of 10 CFR part 100, the design earthquake (DE) must be equivalent to the safe shutdown earthquake (SSE) for a nuclear power plant.'' In this context, ''DE'' and ''SSE'' refer to the design peak ground acceleration (PGA), with an appropriate response spectrum, caused by the largest credible earthquake. The most recent deterministic seismic hazard analysis for the ISFSI site, completed in accordance with appendix A of part 100, yields a DE of 0.56 g PGA. However, DOE–ID proposes a DE with a 0.36 g PGA as an adequately conservative seismic design for the ISFSI.

The staff is considering granting the requested exemption from 10 CFR 72.102(f)(1).

Need for the Proposed Action

The applicant is preparing to build and operate the TMI–2 ISFSI as described in its application and SAR, subject to approval of the pending licensing application. Specifically, DOE is concerned with designing low risk facilities, such as an ISFSI, to the requirements of 10 CFR part 100, appendix A, as it would set precedent that appears to be unnecessary, technically inappropriate, and potentially unattainable throughout the DOE complex. The DOE–ID seismic hazard analysis meeting the requirement of 10 CFR 72.102(f)(1) yields a DE of 0.56 g PGA, with an appropriate response spectrum, for the ISFSI site. DOE–ID proposes a DE of 0.36 g PGA, with an appropriate response spectrum. DOE–ID justifies this value with a site-specific radiological risk analysis.

In response to DOE's September 15, 1997, letter requesting this exemption, the staff prepared a safety evaluation report which was forwarded to the Commission as an attachment to SECY–98–071 (April 8, 1998). In that paper, the staff recognized that although 10 CFR part 72 does not currently allow PSHA e.g., ''risk-based,'' as an acceptable methodology for deriving a DE for an ISFSI, the PSHA results are being accepted by NRC in other licensing actions. The PSHA method is acceptable for nuclear power plants under the January 1997 revisions to 10 CFR parts 50 and 100. Furthermore, NRC has accepted the PSHA method for the design and performance assessment for the proposed high-level waste repository at Yucca Mountain. On May 20, 1998, the Commission informed the staff that it did not object to the proposed exemption.

A complete safety evaluation is available as part of SECY–98–071. In summary, it found that when 10 CFR part 72 was first promulgated in 1980, ISFSIs were largely envisioned to be either spent fuel pools or single, massive dry storage structures. Given the potential accident scenarios, a DE equivalent to a nuclear power plant SSE seemed appropriate for these facilities. Furthermore, for ISFSIs to be located at a nuclear power plant, the DE value was readily available without additional site characterization work, save the geotechnical investigation at the specific ISFSI location. However, an ISFSI storing spent fuel in dry casks or canisters is inherently less hazardous and less vulnerable to earthquake-initiated accidents than an operating nuclear power plant. NRC recognized this in the initial part 72, ''Statements of Consideration,'' and stated that the DE for cask and canister technology need not be as high as a nuclear power plant SSE: ''For ISFSIs which do not involve massive structures, such as dry storage casks and canisters, the required design earthquake will be determined on a case-by-case basis until more experience is gained with licensing these types of units.'' The staff believes that this experience has been gained over the past 13 years of ISFSI operations.

Environmental Impacts of the Proposed Action

The ''Final Environmental Impact Statement (FEIS) for the Construction and Operation of the TMI–2 Independent Spent Fuel Storage Installation,'' NUREG–1626 (March 1998), considered the potential environmental impacts of licensing this facility, including potential accidents during storage. A description of the potential accidents during storage is provided in Section 4.1.2.7.3 of NUREG–1626.

An ISFSI is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-caused events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an ISFSI include tornado winds and tornado generated missiles, design basis earthquakes, design basis floods, accidental cask drops, lightning effects, fires, explosions, and other incidents.

Special ISFSI design features include using nonflammable materials, providing a horizontal storage module with walls and a roof of structural steel and reinforced concrete (approximately 2.5 feet (0.76 meter) thick) to house a dry-shielded steel canister, and a passive ventilation system. Considering the specific design requirements for each accident condition, the design of the ISFSI would prevent loss of

containment, shielding, or criticality control.

The bounding consequences of a major seismic event at an ISFSI using the NUHOMS system technology are limited by a canister drop onto the concrete pad, although this would occur only at a ground motion well above the proposed 0.36 g PGA design value, as detailed in Section 8.2.3.2 of the TMI–2 ISFSI SAR. The casks and canisters are designed to withstand such events with no release of radioactive material. The effects of a NUHOMS canister drop are analyzed in Section 8.2.5.2 of the SAR. In addition, analysis of beyond-design basis accidents leading to cask or canister rupture estimate off-site doses well below the 0.05 Sv (5 rem) whole body dose limit of 10 CFR 72.106(b). In a letter dated July 19, 1996, DOE–ID presented a conservative analysis of off-site doses resulting from a beyond-design basis accident. In this hypothetical accident, for which neither DOE–ID nor the staff has identified a credible mechanism, both a NUHOMS dry shielded canister and one of the 12 inner core debris canisters are assumed to fail, allowing unmitigated dispersal of the contents. The calculated off-site dose from such an accident is 0.75 mSv (75 mrem), well below the 0.05 Sv (5 rem) siting evaluation factor of 10 CFR 72.106(b).

DOE–ID has completed both a Deterministic Seismic Hazard Analysis (DSHA) (Appendix A of Part 100) and PSHA (10 CFR 100.23) for the ISFSI site. The staff has evaluated these analyses and finds the resultant values acceptable: 0.56 g PGA for an SSE by the deterministic method and 0.30 g PGA mean ground motion with a 2000-year return period by the probabilistic method. The staff finds acceptable the risk-graded approach to seismic hazard characterization and design in DOE Standard 1020, which is similar to the risk-graded approach of using the 2000-year return period mean ground motion as the DE is adequately conservative. Moreover, the expected life span of the ISFSI, 20 years with the possibility of renewal, per 10 CFR 72.42, justifies use of this ground motion as the DE. The DE proposed by DOE–ID for the ISFSI, 0.36 g PGA with an appropriate response spectrum exceeds the 0.30 g PGA value for the 2000-year return period mean ground motion. Therefore, the staff concludes that granting the requested exemption from 10 CFR 72.102(f)(1) will maintain an adequate design margin for seismic events and will not be inimical to public health and safety.

Alternatives to the Proposed Action

Since there are no significant environmental impacts associated with the proposed action, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the 10 CFR 72.102(f)(1) exemption and require that DOE design the facility to withstand the effects of a higher PGA. This alternative would have no significant environmental impact as well.

Agencies and Persons Consulted

On March 1, 1999, Mr. Alan Merritt from the State of Idaho, INEEL Oversight Program, was contacted about the EA for the proposed action and had no concerns.

Finding of no Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.102(f)(1), given the absence of radiological consequences from any credible seismic event, will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

The staff finds acceptable the risk-graded approach to seismic hazard characterization and design in DOE Standard 1020, which is similar to the risk-graded approach to design basis events in 10 CFR part 60. Given the absence of radiological consequences from any credible seismic event, the staff finds that the DOE Standard 1020 risk-graded approach of using the 2000-year return period mean ground motion as the DE is adequately conservative. Moreover, the expected life span of the ISFSI, 20 years with the possibility of renewal, per 10 CFR 72.42, justifies use of this ground motion as the DE. The DE proposed by DOE–ID for the ISFSI, 0.36 g PGA with an appropriate response spectrum, exceeds the 0.30 g PGA value for the 2000-year return period mean ground motion. Therefore, the staff concludes that granting the requested exemption from 10 CFR 72.102(f)(1) will maintain an adequate design margin for seismic events and will not be inimical to public health and safety.

This application was docketed under 10 CFR part 72, Docket 72–20. For further details with respect to this action, see the application for an ISFSI license dated October 31, 1996, and the request for exemption dated September 15, 1997, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555 and the Local Public Document Room at the INEEL Technical Library, 1776 Science Center Drive, Idaho Falls, ID 83402.

Dated at Rockville, Maryland, this 13th day of March 1999.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–6909 Filed 3–19–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–20]

Department of Energy, Idaho Operations Office; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Exemptions From Certain Regulatory Requirements of 10 CFR Part 10

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption, pursuant to 10 CFR 20.2301, from the requirements of 10 CFR 20.1501(c) to the U.S. Department of Energy, Idaho Operations Office (DOE–ID or applicant). Exemption from 10 CFR 20.1501(c) would allow DOE–ID to use a DOE Laboratory Accreditation Program process for personnel dosimetry at its proposed Independent Spent Fuel Storage Installation (ISFSI). The proposed ISFSI is to be located at the Idaho National Engineering and Environmental Laboratory (INEEL), within the Idaho Nuclear Technology Engineering Center (INTEC) site in Scoville, Idaho. The proposed ISFSI would store the spent nuclear fuel debris created as a result of the Three Mile Island Unit 2 (TMI–2) accident.

Environmental Assessment (EA)

Identification of Proposed Action: The applicant is seeking Commission approval to construct and operate an ISFSI at INTEC. INTEC is an existing facility initially constructed to both store and reprocess spent fuel and high-level waste processed by DOE. Pursuant to 10 CFR Part 72, DOE–ID submitted an application, including a Safety Analysis Report (SAR), for the ISFSI by letter dated October 31, 1996, as supplemented. NRC staff is currently performing a review of that application. On December 18, 1998, DOE–ID

requested an exemption from the requirements of 10 CFR 20.1501(c) which state in part that ''All personnel dosimeters * * * that require processing * * * must be processed and evaluated by a dosimetry processor * * * (1) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology * * *'' Specifically, the applicant proposes allowing the DOE Laboratory Accreditation Program (DOELAP) as an approved alternative.

Need for the Proposed Action: The applicant is preparing to build and operate the TMI–2 ISFSI as described in its application and SAR, subject to approval of the pending license application. The applicant is implementing programs and procedures necessary to operate the ISFSI and seeks to have those programs make efficient use of resources. One of the programs developed by DOE is the capability to monitor personnel occupational radioactive dose for routine and non-routine activities at the TMI–2 ISFSI. Personnel dosimetry requires processing by a qualified processing facility. DOE prefers to use a processing organization that currently processes dosimetry for the INEEL. That processor is accredited under the DOELAP, rather than under the NVLAP. To support the efficient use of resources, DOE has requested to use the DOELAP for processing personnel dosimetry associated with the TMI–2 ISFSI.

Environmental Impacts of the Proposed Action The staff has examined both the NVLAP and DOELAP processes and standards. Both the NVLAP and DOELAP have similar requirements in that they incorporate similar test categories (type of radiation and energy levels), tolerance levels, bias, and performance criteria. The staff concludes that the DOELAP process is at least as stringent as the NVLAP process and further concludes that, for the TMI–2 ISFSI, the DOELAP process is an acceptable alternative to the NVLAP process required by 10 CFR 20.1501(c). The ''Final Environmental Impact Statement (FEIS) for the Construction and Operation of the TMI–2 Independent Spent Fuel Storage Installation,'' NUREG–1626 (March 1998), considered the potential environmental impacts of licensing this facility. The proposed action now under consideration would not change the potential environmental effects assessed in the FEIS. Specifically, there are no environmental impacts associated with the accreditation.

Alternative to the Proposed Action: Since there are no significant environmental impacts associated with the proposed action, any alternatives with equal or greater environmental impacts are not evaluated. The alternative to the proposed action would be to deny approval of the 10 CFR 20.1501(c) exemption and, therefore, not allow use of the DOELAP. This alternative would have no significant environmental impact as well.

Agencies and Persons Consulted: On March 1, 1999, Mr. Alan Merritt of the State of Idaho, INEEL Oversight Program, was contacted about the EA for the proposed action and had no concerns.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 20.1501(c) so that DOE–ID may use the DOELAP, rather than the NVLAP, as required by existing regulations, will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

This application was docketed under 10 CFR part 72, Docket 72–20. For further details with respect to this action, see the application for an ISFSI license dated October 31, 1996, and the request for exemption dated December 18, 1998, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555 and the Local Public Document Room at the INEEL Technical Library, 1776 Science Center Drive, Idaho Falls, ID 83402.

Dated at Rockville, Maryland, this 13th day of March 1999.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–6911 Filed 3–19–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–199]

Manhattan College; Zero Power Reactor Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of a license amendment to Facility Operating License No. R–94, issued to Manhattan College (the licensee) that would allow decommissioning of the Manhattan College Zero Power Reactor (MCZPR) located in the Riverdale section of the borough of the Bronx, New York City.

Environmental Assessment

Identification of the Proposed Action

The MCZPR is located on the Manhattan College campus on the first and second floors of the Leo Engineering Building. The Leo Engineering Building provides classrooms, laboratories, library, and computer facilities for an estimated 1800 students at any one time. The Nuclear Engineering Facility is designed for isolation from the rest of the engineering building.

The MCZPR is a very low power research reactor (100 milliwatts), and was in operation from 1964 until 1996, when it was shut down and defueled. There have been no instances of significant contamination during the operating lifetime of the reactor.

The licensee submitted a decommissioning plan in accordance with 10 CFR 50.82(b) on December 18, 1997, as supplemented on July 21, October 29, November 10, 1998 and January 6, 1999. Decommissioning, as described in the plan, will consist of transferring licensed radioactive equipment and material from the site, and decontamination of the facility to meet unrestricted release criteria (this is also called the DECON option). After the Commission verifies that the release criteria have been met, the reactor license will be terminated. The licensee submitted an Environmental Report on July 21, 1998, (Section 8) which was supplemented on January 6, 1999, that addresses the estimated environmental impacts resulting from decommissioning the MCZPR.

A ''Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action to Decommission Manhattan College Zero Power Research Reactor'' was published in the **Federal Register** on February 12, 1999, (64 FR 7214) and in the Bronx Press Review on February 11, 1999. There were no comments.

Need for the Proposed Action

The proposed action is necessary because of Manhattan College's 1997 decision to cease operations permanently. As specified in 10 CFR 50.82, any licensee may apply to the NRC for authority to surrender a license

voluntarily and to decommission the affected facility. Further, 10 CFR 51.53(d) stipulates that each applicant for a license amendment to authorize decommissioning of a production or utilization facility shall submit with its application an environmental report that reflects any new information or significant environmental change associated with the proposed decommissioning activities. Manhattan College is planning to use the area that would be released for unrestricted use for other academic purposes.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the radiological effects of the decommissioning will be minimal because the radiation levels of the fuel are very low (less than 2 mrem/hr on contact at removal from the core) due to low burnup. As noted in Section 3.1.3 (July 21, 1998, submittal), the collective dose to all on site workers of the entire decommissioning program is estimated to be less than one person-rem. There is no estimated exposure to the public from the proposed action and there are no postulated accident scenarios that could release radioactive material outside the facility.

Occupational and public exposure may result from transportation of the fuel to Oak Ridge and a plutonium-beryllium (PuBe) neutron source to Los Alamos. The occupational transportation radiological impact is estimated to be 2.4 person-rem. The general public is estimated to receive 1.8 person-rem from transportation. Over 90 percent of this exposure is due to the shipment of the PuBe source to Los Alamos. All shipments are of sealed solid material unlikely to be dispersed under accident conditions. Shipment will be in compliance with all applicable NRC and DOT regulations and subject to physical security and safeguards oversight.

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the MCZPR, the Commission has determined that the proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

The three alternatives to the proposed action for the MCZPR are: SAFSTOR, ENTOMB, and no action. SAFSTOR is the alternative in which the nuclear facility is placed and maintained in a condition that allows the nuclear facility to be safely stored and subsequently decontaminated (deferred decontamination) to levels that permit release for unrestricted use. ENTOMB is the alternative in which radioactive contaminants are encased in a structurally long-lived material, such as concrete, the entombed structure is appropriately maintained and continued surveillance is carried out until the radioactivity decays to a level permitting release of the property for unrestricted use. The no action alternative would leave the facility in its present configuration. However, the regulations in 10 CFR 50.82(b) only allow a limited time for this condition to exist.

Manhattan College has determined that the proposed action (DECON) is the most efficient use of the existing facility, since it wants to use the space that will become available for other academic purposes. The SAFSTOR, ENTOMB or no action alternatives would entail continued surveillance and physical security measures to be in place and continued monitoring by college personnel.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Environmental Assessment prepared for the renewal of Manhattan College's license in March 1985.

Agencies and Persons Contacted

In accordance with its stated policy, on December 14, 1998, the staff consulted with the New York State official, Barbara Youngberg of the Department of Environmental Conservation, regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 18, 1997, as supplemented by letters dated July 21 and October 29, November 10, 1998 and January 6, 1999, which are available for public inspection at the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 16th day of March 1999.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 99–6910 Filed 3–19–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Joint Meeting of the ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Regulatory Policies and Practices

The ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Regulatory Policies and Practices will hold a joint meeting on April 7, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 7, 1999—8:30 a.m. until 12:00 Noon.

The Subcommittees will discuss the staff's proposed approach for revising the Commission's Safety Goal Policy Statement. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions

of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m.(EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: March 16, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–6902 Filed 3–19–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on April 6, 1999, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, April 6, 1999—1:00 p.m. until the conclusion of business.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the status of appointment of a new member to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415-7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: March 15, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–6903 Filed 3–19–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1076 (which should be mentioned in all correspondence concerning this draft guide), is a proposed Revision 1 of Regulatory Guide 1.54 and is titled ''Service Level I, II, and III Protective Coatings Applied to Nuclear Power Plants.'' This proposed revision is being developed to update the NRC's guidance on the selection, qualification, application, and maintenance of protective coatings in nuclear power plants by endorsing the current versions of multiple consensus standards developed by the American Society for Testing and Materials.

The draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by July 30, 1999.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov. For information about the draft guide and the related documents, contact Mr. A.W. Serkiz, (301) 415–6563; e-mail AWS@nrc.gov.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax

to (301) 415–2289, or by e-mail to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 4th day of March 1999.

For the Nuclear Regulatory Commission.

John W. Craig,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 99–6906 Filed 3–19–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1083 (which should be mentioned in all correspondence concerning this draft guide), is ''Content of the Updated Final Safety Analysis Report in Accordance with 10 CFR 50.71(e).'' The guide will be in Division 1, ''Power Reactors,'' of the Regulatory Guide Series. This regulatory guide is being developed to provide guidance to licensees to ensure that Updated Final Safety Analysis Reports are updated to reflect changes to the design bases and to reflect the effects of other analyses performed since the original licensing.

During its review of NEI 98–03, ''Guidelines for Updating Final Safety Analysis Reports'' (October 1998), the staff noticed that the voluntary guidance in Appendix A to NEI 98–03 could be interpreted to allow the removal of all information that is not required to be incorporated into an updated FSAR (UFSAR), regardless of whether that information is associated with risk-significant structures, systems, and components (SSCs). This could occur for SSCs that are not (1) addressed by technical specifications, (2) necessary for the facility to meet its design basis or safety analyses, (3) part of the UFSAR description, as defined in Section 3.7 of NEI 98–03, or (4) otherwise required to be incorporated into the UFSAR in accordance with 10 CFR 50.34(b), 10 CFR 50.71(e), or other NRC requirements including license conditions and orders.

The staff's concern is that the removal of this information was intended by neither the proposed generic letter nor NEI 98–03. The staff is proposing that a statement such as the following be incorporated into Appendix A of NEI 98–03, most likely as a fourth bullet in Section A2, ''Controlling Modifications to the Updated FSAR.''

It is the intent of this guideline to help licensees remove unimportant information from UFSARs such as excessive detail, obsolete information, or redundant information. This guideline is not intended to be used to remove information from UFSARs regarding SSCs that insights from operating experience or probabilistic risk assessments would indicate are risk significant.

It should be understood that this limitation is voluntary; i.e., licensees who choose to take out information regarding risk-significant SSCs would be free to do so, absent an order or other legally binding requirement (e.g., a rule) directing the licensee not to remove the information.

The staff is specifically requesting comments on the above language and on the appropriateness of retaining information associated with risk-significant SSCs in UFSARs, even when a specific requirement to do so does not exist.

The draft guide has not received complete staff review or approval and does not represent an official NRC staff position.

Public comments are being solicited on Draft Regulatory Guide DG–1083. Comments may be accompanied by additional relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by April 30, 1999.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://ruleforum.llnl.gov/cgi-bin/library?source = *&library = rg__lib&file = *). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov. For information about the draft guide and the related documents, contact Mr. T.A. Bergman, (301) 415–1021, e-mail TAB@nrc.gov.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301)415–2289; or by email to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 4th day of March 1999.

For the Nuclear Regulatory Commission.

John W. Craig,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 99–6907 Filed 3–19–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Appointments to Performance Review Boards for Senior Executive Service

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointment to Performance Review Boards for Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Performance Review Boards.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives:

Patricia G. Norry, Deputy Executive Director for Management Services

Stephen G. Burns, Deputy General Counsel, Office of the General Counsel
Guy P. Caputo, Director, Office of Investigations
Samuel J. Collins, Director, Office of Nuclear Reactor Regulation
Margaret Federline, Deputy Director, Office of Nuclear Regulatory Research
Jesse L. Funches, Chief Financial Officer
Anthony J. Galante, Chief Information Officer
Hubert J. Miller, Regional Administrator, Region I
Malcolm R. Knapp, Deputy Director for Regulatory Effectiveness
Carl J. Paperiello, Director, Office of Nuclear Material Safety and Safeguards
Roy P. Zimmerman, Deputy Director, Office of Nuclear Reactor Regulation

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Karen D. Cyr, General Counsel, Office of the General Counsel
Frank J. Miraglia, Jr., Deputy Executive Director for Regulatory Programs
Ashok C. Thadani, Director, Office of Nuclear Regulatory Research

All appointments are made pursuant to section 4314 of Chapter 43 of Title 5 of the United States Code.

EFFECTIVE DATE: March 22, 1999.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Swanson, Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–7530.

Dated at Rockville, Maryland, this 15th day of March 1999.

For the U.S. Nuclear Regulatory Commission.

Carolyn J. Swanson,

Secretary, Executive Resources Board.

[FR Doc. 99–6904 Filed 3–19–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (FirstLink Communications, Inc., Common Stock, No Par Value, and Common Stock Purchase Warrants) File No. 1–14271

March 16, 1999.

FirstLink Communications, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d22(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'').

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Securities of the Company have been listed for trading on the BSE and since July 27, 1998, pursuant to a Registration Statement on Form SB–2 which became effective on said date, on the Nasdaq SmallCap Market.

On February 18, 1999, the Company's Securities were suspended from trading on the BSE due to the Company's failing to meet the Exchange's minimum beneficial shareholder requirement with respect to the Common Stock of 600 beneficial shareholders.

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 Securities from listing on the BSE and by setting forth in detail to the Exchange the reasons for the proposed withdrawal and the facts in support thereof. In making the decision to withdraw its Securities from listing on the BSE, the Company considered the minimum beneficial shareholder requirements of the Exchange and, based on a cost/benefit analysis, has decided not to rectify the situation.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Securities from listing on the BSE.

The Company's application relates solely to the withdrawal from listing of the Securities from the BSE and shall have no effect upon the continued listing of the Securities on the Nasdaq SmallCap Market.

Any interested person may, on or before, April 6, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, 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. 99–6915 Filed 3–19–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23739; 812–11298]

TCAW Galileo Funds, Inc., et al.; Notice of Application

March 16, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1)(G)(i)(II) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit a fund of funds relying on section 12(d)(1)(G) of the Act to invest directly in certain equity securities.

APPLICANTS: TCW Galileo Funds, Inc. (''Company''), on behalf of its series TCW Galileo International Equities Fund (''International Fund''), and TCW Funds Management, Inc. (''Adviser'').

FILING DATES: The application was filed on September 8, 1998 and amended on January 6, 1999 and March 12, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 8, 1999 and should be accompanied by proof of service on the applicants in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicant, c/o Phillip K. Holl, TCW Funds Management, Inc., 865 South Figueroa Street, Suite 1800, Los Angeles, CA 90017.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or George J. Zornada,

Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Company, a Maryland corporation, is registered under the Act as an open-end management investment company. The Company currently is comprised of twenty-one series, including the International Fund. The Adviser, a California corporation, is registered under the Investment Advisers Act of 1940 and is investment adviser to each series of the Company. The Adviser is a wholly-owned subsidiary of The TCW Group, Inc.

2. The International Fund is a fund of funds relying on section 12(d)(1)(G) of the Act. The International Fund's investment objective is long-term capital appreciation through the allocation of assets, within predetermined percentage ranges approved by the board of directors of the Company (''Board''), including a majority of the directors who are not interested persons, as defined in section 2(a)(19) of the Act (''Independent Directors''), among the Company's other separate series (or any new series) which, except for a money market fund, invest in foreign securities (Underlying Funds''). Applicants request relief to permit the International Funds to invest directly in equity securities of companies located in Australia and New Zealand (''Australia and New Zealand Securities''). No Underlying Funds invest in Australia or New Zealand Securities and applicants state shareholders of the International Fund would be disadvantaged if the International Fund could not diversify and capture any performance benefit in these markets.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities (i) represent more than 3% of the acquired company's outstanding voting stock; (ii) more than 5% of the acquiring company's total assets; or (iii) if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will (i) cause the acquiring company to own more than 3% of the acquired company's voting stock, or (ii) cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (a) the acquiring company and the acquired company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities; and short-term paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) of the Act or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934 or the Commission; and (d) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G). Applicants believe that the proposed arrangement would comply with the provisions of section 12(d)(1)(G), except for the fact that the International Fund would like the flexibility to invest a portion of its assets directly in Australia and New Zealand Securities.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt, conditionally or unconditionally, persons or transactions from the provisions of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants believe that permitting the International Fund to invest in Australia and New Zealand Securities as described in the application would not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions.

1. Before approving any advisory contract under section 15 of the Act, the Board, on behalf of the International Fund, including a majority of the Independent Directors, will find that the advisory fees, if any, charged under such contract are based on services provided that are in addition to, rather than duplicative of, services that are provided under any Underlying Fund's advisory contract. The finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the International Fund.

2. Applicants will comply with all of the provisions of section 12(d)(1)(G) of the Act, except for section 12(d)(1)(G)(i)(II) to the extent that it restricts the International Fund from investing in securities as described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–6918 Filed 3–19–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of March 22, 1999.

A closed meeting will be held on Thursday, March 25, 1999, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Carey, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, March 25, 1999, at 2:30 p.m., will be:

Institution and settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: March 18, 1999.

Johathan G. Katz,

Secretary.

[FR Doc. 99–7062 Filed 3–18–99; 12:22 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41164; File No. SR–Amex–99–01]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the American Stock Exchange LLC Relating to Reductions in Airline, Natural Gas, Pharmaceutical and Securities Broker-Dealer Indices Values

March 12, 1999.

I. Introduction

On January 6, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to reduce the index values for the Airlines, Natural Gas, Pharmaceutical and Securities Broker/Dealer Indices.

The proposed rule change was published for comment in the **Federal Register** on February 9, 1999.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The Commission granted the Exchange approval to list and trade options on the Airline Index on December 12, 1994,[4] the Natural Gas Index on March 7, 1994,[5] the Pharmaceutical Index on June 18, 1992,[6] and the Securities Broker/Dealer Index on March 15, 1994.[7] Initially, the aggregate value of the stocks contained in the Indices was reduced by divisors to establish index benchmark values of 200 in the Airline Index and Pharmaceutical Index and 300 in the Natural Gas Index and Securities Broker/Dealer Index. As of December 16, 1998, the index values were as follows: Airline Index—275, Pharmaceutical—742, Natural Gas Index—216, and Securities Broker/Dealer Index—464.[8]

In the case of the Airline, Pharmaceutical and Securities Broker/Dealer Indices, the Exchange believes that as a consequence of the rising values of the Indices, premium levels for options on the Indices have also risen. According to the Exchange, these higher premium levels have been cited as the principal factor that has discouraged retail investors and some market professionals from trading those index options. In addition, in the case of the Natural Gas Index the Exchange represents that its membership has indicated that indices with values between 100 and 200 tend to promote increased liquidity in the overlying options. As a result, the Exchange is proposing to decrease the Indices by one-half of their present values.

To decrease the values of the Indices, the Exchange will double the divisor used in calculating the Indices. The Amex proposes no other changes to the components of the Indices, their methods of calculation (other than the change in the divisor), expiration style of the options or any other Index specification.

The Amex believes that lower value Indices will result in substantial lowering of the dollar values of options premiums for options contracts on the Airline, Natural Gas, Pharmaceutical, and Securities Broker/Dealer Indices. The Exchange plans to adjust outstanding series similar to the manner in which equity options are adjusted for a 2-for-1 stock split. On the effective date of the split ''ex-date,'' the number of outstanding options contracts on the Indices will be doubled and the associated strike prices halved.

Position and Exercise Limits

Currently, position and exercise limits for the Indices are as follows: Airline—15,000 contracts; Natural Gas—15,000 contracts; Pharmaceutical—12,000 contracts; and Securities Broker/Dealer—15,000. The Exchange proposes to double the position and exercise limits to 30,000, 30,000, 24,000, and 30,000 contracts respectively, on the same side of the market. This change will be made simultaneously with the proposed reduction of the Indices' values and the doubling of the number of contracts.

Because the new position and exercise limits will be equivalent to the Indices' present limits, the Exchange believes there is no additional potential for manipulation of the Indices or the underlying securities. Further, an investor who is currently at the 12,000 or 15,000 contract limit will, as a result of the Index value reductions, automatically hold 24,000 or 30,000 contracts to correspond with the lowered Index values. These increased position and exercise limits will revert to the original limits at the expiration of the furthest expiration month for non-LEAPs as established on the date of the split.[9]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b).[10] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) [11] requirements in that the proposed reduction in value of the Indices and the associated temporary increases in the position and exercise limits should remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.[12]

By reducing the value of the Indices, the Commission believes that a broader range of investors will be provided with a means to hedge their exposure to the market risk associated with the stocks underlying the Indices. Similarly, the Commission believes that reducing the value of the Indices may attract additional investors, thus creating a more active and liquid trading market.

The Commission also believes that Amex's proposed adjustments to its position and exercise limits applicable to the Indices are appropriate and consistent with the Act. In particular, the Commission believes that the temporary doubling of the position and exercise limits is reasonable in light of the fact that the size of the options contracts on the Indices will be halved and that, as a result, the number of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41010 (February 1, 1999), 64 FR 6404 (February 9, 1999).

[4] Securities Exchange Act Release No. 35084 (December 12, 1994), 59 FR 65419 (December 19, 1994).

[5] Securities Exchange Act Release No. 33720 (March 7, 1994), 59 FR 11630 (March 11, 1994).

[6] Securities Exchange Act Release No. 30830 (June 18, 1992), 57 FR 28221 (June 24, 1992).

[7] Securities Exchange Act Release No. 33766 (March 15, 1994), 59 FR 13518 (March 22, 1994).

[8] On May 1, 1998, the Commission granted the Exchange approval to split the Airline Index in half. *See* Securities Exchange Act Release No. 39941 (May 1, 1998), 63 FR 25251 (May 7, 1998). On March 20, 1998, the Commission granted the Exchange approval to split the Securities Broker/Dealer Index in half. *See* Securities Exchange Act Release No. 39775 (March 20, 1998), 63 FR 14741 (March 26, 1998).

[9] *See* note 13 *infra*.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

outstanding options contracts an investor holds will be doubled. The temporary doubling of the position and exercise limits, therefore, will ensure that investors will not potentially be in violation of the lower existing position and exercise limits while permitting market participants to maintain, after the split of the Indices, their current level of investment in the Airline, Natural Gas, Pharmaceutical, and Securities Broker/Dealer Index option contracts. As noted above, the increased position and exercise limits of 24,000 and 30,000 contracts will revert to their original limits of 12,000 and 15,000 contracts at the expiration of the furthest expiration month for non-LEAPs as established on the date of the split.[13]

The Commission further believes that doubling the Airline, Natural Gas, Pharmaceutical, and Securities Broker/Dealer Indices' divisors will not have an adverse market impact on the trading in these options. After the split, the Indices will continue to be composed of the same stocks with the same weighings and will be calculated in the same manner, except for the proposed change in the divisors. The Commission notes that the Amex's surveillance procedures will also remain the same.

Finally, the Commission notes that, before implementing the proposed changes, the Exchange will provide reasonable advance notice of the proposed changes to the Indices to its membership.[14] From experience, the Commission finds that reasonable notice may include the Exchange providing notice to its membership at least two weeks prior to the implementation of the proposed changes to the values of the Indices and the resulting adjustments to the outstanding options, issuing a second notice to its members just prior to implementing the Index reductions setting forth the new divisor and other relevant information, and issuing a circular to its members at least one month prior to the expiration of the furthest non-LEAP options on the Indices reminding its member firms that the respective position and exercise limits will revert to their original levels. Although not exclusive, the Commission believes that these proposed time frames should allow for adequate notice to be provided to the holders of all open positions in options on the Airline, Natural Gas, Pharmaceutical, and Securities Broker/Dealer Indices and other market participants.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–Amex–99–01) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–6917 Filed 3–19–99; 8:45 am]

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[13] According to the Amex, December 1999 will be the furthest expiration months for non-LEAPs on the Indices, for purposes of the reversion of position and exercise limits to their original levels. Per telephone conversation between Scott Van Hatten, Legal Counsel, Amex, and Marianne Duffy, Division of Market Regulation, SEC, on January 28, 1999.

[14] *Id.* and telephone conversation between Scott Van Hatten, Legal Counsel, Amex, and Heather Traeger, Division of Market Regulation, SEC, on March 11, 1999.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41170; File No. SR–MSRB–99–1]
March 15, 1999.

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–38 on Consultants

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 March 4, 1999, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–99–1) as described in Items I, II, and III below, which Items have been prepared by the Board. The MSRB has designated this proposal as one constituting a stated policy, practice or interpretation with respect to the enforcement of an existing rule under Section 19(b)(3)[3] of the Act which renders the proposal effective upon receipt of the filing by the Commission. 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 Board is filing herewith a notice of interpretation concerning Rule G–38 on consultants. The text of the proposed rule change is as follows in italics.

* * * * *

Rule G–38 Question and Answer

Agreement to Jointly Seek Underwriting Assignments

Q: Dealer Firm A and Dealer Firm B have entered into an agreement to jointly seek underwriting assignments. As part of this agreement, the two dealers shave jointly submitted proposals to issuers. Dealer Firm A ultimately is selected to underwrite a negotiated sale of a primary offering of municipal securities (i.e., ''municipal securities business'' as defined in Rule G–37). Dealer Firm B will not act as an underwriter on this offering but will assist Dealer Firm A in structuring the transaction. Dealer Firm A will compensate Dealer Firm B for the work it provides on the transaction. Is Dealer Firm B a consultant to Dealer Firm A pursuant to Rule G–38, on consultants?

A. Yes. Dealer Firm B is a consultant to Dealer Firm A because, pursuant to the definition of consultant in Rule G–38(a)(i), Dealer Firm B is: (1) used by Dealer Firm A to obtain municipal securities business, (2) through direct or indirect communication with an issuer on behalf of Dealer Firm A, and (3) the communication is undertaken by Dealer Firm B in exchange for, or with the understanding of receiving, payment from Dealer Firm A. Moreover, Dealer Firm B is not exempt from the definition of consultant since it is not a municipal finance professional, and its sole basis of compensation is not the actual provision of legal, accounting or engineering advice, services or assistance. In addition, the Board believes that, even though Dealer Firm B is providing substantive work on the transaction, any dealer used by another dealer (other than a member of the syndicate) to assist in obtaining or retaining municipal securities business is acting as a consultant pursuant to Rule G–38.

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 Board 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 texts of these statements may be examined at the places specified in Item IV below. The Board 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.

[1] 15 U.S.C. 78s(b)(3).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On January 17, 1996, the Commission approved Board Rule G–38, on consultants.[4] The Board adopted the rule because it was concerned about dealers' increasing use of consultants to obtain or retain municipal securities business, notwithstanding the requirements of: (i) Rule G–37 concerning political contributions and prohibitions on municipal securities business; (ii) Rule G–20 concerning gifts and gratuities; and (iii) Rule G–17 concerning fair dealing. Rule G–38 requires dealers to disclose information about their consultant arrangements to issuers and the public. Recently, the Board received an inquiry from a dealer concerning the application of Rule G–38 to instances in which dealers have entered into agreements to jointly seek underwriting assignments. The Board has determined to publish this fourth notice of interpretation[5] which sets forth, in question-and-answer format, to provide general guidance on Rule G–38 and to assist the municipal securities industry, and, in particular, brokers, dealers, and municipal securities dealers in understanding and complying with Rule G–38. The Board will continue to monitor the application of Rule G–38, and, from time to time, will publish additional notices of interpretations, as necessary.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C)[6] of the Act, which provides, among other things, that the rules of the Board shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because it would apply equally to all brokers, dealers, and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board and, therefore, has become effective pursuant to Section 19(b)(3)(A)[7] of the Act, and subparagraph (f) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the proposed 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. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–99–1 and should be submitted by April 12, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–6830 Filed 3–19–99; 8:45 am]

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[4] Securities Exchange Act Release No. 36727 (January 17, 1996), 61 FR 1955 (January 24, 1996). The rule became effective on March 18, 1996.

[5] *See* Securities Exchange Act Release No. 36950 (March 11, 1996), 61 FR 10828 (March 15, 1996), *MSRB Reports*, Vol. 16, No. 2 (June 1996) at 3–5; Securities Exchange Act Release No. 37997 (November 29, 1996), 61 FR 64781 (December 6, 1996), *MSRB Reports*, Vol. 17, No. 1 (January 1997) at 15; and Securities Exchange Act Release No. 40499 (September 29, 1998), 63 FR 53739 (October 6, 1998), *MSRB Reports*, Vol. 18, No. 2 (August 1998) at 13. *See also MSRB Manual* (CCH) at paragraph 3686.

[6] 15 U.S.C. 78o–4(b)(2)(C).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41171; File No. SY–NYSE–99–8]

Self-Regulatory Organization; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Continuing Annual Listing Fees

March 15, 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 February 16, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Paragraph 902.02(C) of the Exchange's Listed Company Manual (''Manual'') contains the schedule of current continuing annual listing fees for NYSE-listed companies. The Exchange proposes to amend Paragraph 902.02(c) of the Manual.Paragraph 902.02(C) currently establishes a maximum continuing annual listing fee of $500,000 for each issue (*i.e.*, security) listed by an issuer. The NYSE proposes to amend Paragraph 902.02(C) to apply a $500,000 cap to all securities listed by an issuer, other than derivative products, fixed-income products, and closed-end funds. The Exchange seeks accelerated approval of the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

amendment to Paragraph 902.02(C) of the Manual.

The text of the proposed rule change is available at the Office of the Secretary, NYSE 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 NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspect of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The proposed rule change amends the listed company fee schedule, set forth in Paragraph 902.02 of the Manual, as it applies to continuing annual listing fees. Specifically, the Exchange seeks to amend the current capped fee structure, whereby the continuing annual listing fee for each issue (*i.e.*, security) is capped at $500,000. Under the proposal, the $500,000 cap will apply to all issues combined for each issuer. Thus, in computing the continuing annual listing fee for a particular issuer, the Exchange will sum up the fees for each class (or series) of security for a listed company and cap the feed for the issuer at $500,000. For purposes of this calculation, derivative products and fixed-income products will not be subject to the $500,000 cap and will continue to be billed separately, above and beyond the cap. In addition, closed-end funds will continue to be treated separately.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(4)[3] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6 of the Act.[4] More specifically, the Commission believes that the reduction in continuing annual listing fees is consistent with Section 6(b)(4) of the Act,[5] which requires that the rules of an exchange assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using its facilities.[6] The Commission believes that the proposal may ease the financial burden for NYSE-listed companies that list multiple issues on the Exchange, thus facilitating capital formation and furthering competition among the Exchange and other market centers.

The Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval will permit Exchange-listed issuers to take advantage of the Exchange's reduction in continuing annual listing fees. Accordingly, the Commission believes that good cause exists, consistent with Section 6(b)(5) and Section 19(b)(2) of the Act, to grant accelerated approval to the proposal.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–99–8 and should be submitted by April 12, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–99–8) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–6916 Filed 3–19–99; 8:45 am]

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[3] 15 U.S.C. 78f(b)(4).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation, 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Emergency Review Request and Proposed Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is requesting emergency consideration from OMB by March 29, 1999 of the information collection listed below.

Disability Update Report—0960–0511. The Social Security Act requires a periodic review of the disabled status of recipients whose benefits are based on disability to determine whether they continue to be eligible for these benefits. SSA uses the information collected on the SSA–455 to identify those beneficiaries who have medically improved and/or returned to work and have substantial earnings, and to decide whether a full medical continuing disability review should be conducted or deferred to a later date. The respondents are recipients of

supplemental security income and/or social security disability benefits.

Number of Respondents: 900,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 225,000 hours.

In addition, SSA will submit this collection for approval under the normal OMB clearance process. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Comments should be directed to the OMB Desk Officer and the SSA Reports Clearance Officer at the addresses listed below. You can obtain a copy of the collection instrument and/or OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him. Comments will be most useful if received within 60 days from the date of this notice.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

(OMB Address)

Office of Management and Budget, OIRA, Attn: Lori Schack, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

Dated: March 16, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–6822 Filed 3–19–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 3012]

Determination on U.S. Position on Proposed Credit Facility of EBRD to Bosnia and Herzegovina

Pursuant to the authority vested in me by section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999, as enacted in Public Law 105–277 (''FOAA''), I hereby waive the application of Section 570 of the FOAA with regard to the U.S. position on proposed credit programs of the European Bank for Reconstruction and Development in Bosnia and Herzegovina.

The U.S. representative may vote in favor of a proposed EBRD credit line facility to banks in Bosnia and Herzegovina and a capital investment in the Microenterprise Bank (MB).

I hereby determine that these programs would directly support the implementation of the Dayton Agreement and its Annexes.

This Determination shall be published in the **Federal Register**.

Dated: March 9, 1999.

Madeline Albright,

Secretary of State.

[FR Doc. 99–6927 Filed 3–19–99; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending March 12, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Secs. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5221.

Date Filed: March 12, 1999.

Parties: Members of the International Air Transport Association.

Subject: PTC2 ME–AFR 0026 dated 12 March 1999, mail Vote 988—TC2 Middle East-Africa Expedited Resolution 010b, intended effective dates: 1 April/1 May 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–6858 Filed 3–19–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application and Use the Revenue From a Passenger Facility Charge (PFC) at Bush Field Airport, Augusta, GA

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 Bush Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 21, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Federal Aviation Administration, DOT, 1701 Columbia Avenue, Suite 2–260, College Park, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Albert McDill, Executive Director of the Public Agency at the following address: Augusta Aviation Commission, 1501 Aviation Way, Augusta, GA 30906.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Public Agency under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Gaetan, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, GA 30337–2747, Phone: (404) 305–7148. 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 impose and use the revenue from a PFC at Bush Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 15, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by Augusta Aviation Commission was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 25, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–01–C–00–AGS.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 1999.

Proposed charge expiration date: September 1, 2026.

Total estimated PFC revenue: $29,169,803.00.

Brief description of proposed project(s): Impose & Use Terminal Construction/Rehabilitation.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: ATCO filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Public Agency.

Issued in College Park, Georgia on March 15, 1999.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 99–6938 Filed 3–19–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–22–00–CHO) To Impose and Use a Passenger Facility Charge (PFC) at Charlottesville-Albemarle Airport, Charlottesville, VA

AGENCY: Federal Aviation Administration (FA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Charlottesville-Albemarle Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 21, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Art Winder, Project Manager, Washington, Airports District Office, 23724 Air Freight Lane, Cargo 5 Bldg., 2nd Fl. Dulles, VA 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bryan Elliott, Executive Director, Charlottesville-Albemarle Airport Authority at the following address: 201 Bowen Loop, Charlottesville, Virginia 22911.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Charlottesville-Albemarle Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Art Winder, Project Manager, Washington, Airports District Office, 23723 Air Freight Lane, Cargo 5 Building, 2nd Floor, Dulles, VA 20166, (703) 661–1363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Charlottesville-Albemarle Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 8, 1999, the FAA determined that the application to impose and use a PFC submitted by the Charlottesville-Albemarle Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 6, 1999. The following is a brief overview of the application.

Application number: 99–12–C–00–CHO.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2004.

Proposed charge expiration date: June 1, 2004.

Total estimated PFC revenue: $160,000.

Brief description of proposed projects:

—Air Carrier Terminal Building Refurbishment

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Foreign carriers ticketing passengers through the Charlottsville-Albermarle Airport and Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, #111, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Charlottesville-Albermarle Airport Authority.

Issued in Jamaica, New York, on March 1, 1999.

Kenneth Kroll,

AIP/PFC Team Leader, AEA–610, Eastern Region.

[FR Doc. 99–6937 Filed 3–19–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In February 1999, there were five applications approved. Additionally, six approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of section 158.29.

PFC Applications Approved

Public Agency: Jackson County Airport Authority, Medford, Oregon.

Application Number: 99–05–C–00–MFR.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,583,000.

Earliest Charge Effective Date: June 1, 2003.

Estimated Charge Expiration Date: February 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: Operations by air taxi/commercial operators when enplaning revenue passengers in limited, irregular, special service air taxi/commercial operations such as air ambulance services, student instruction, non-stop sightseeing flights that begin and end at the airport and are conducted within a 25-mile radius of the airport, and other similar limited, irregular, special service operations by such air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than1 percent of the

total annual enplanements at Rogue Valley International—Medford Airport.

Brief Description of Projects Approved for Collection and Use:

Runway lighting.
Airport emergency generator.
Runway 14/32 rehabilitation.
Security access system.

Decision Date: February 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (425) 227–2660.

Public Agency: Milwaukee County, Milwaukee, Wisconsin.

Application Number: 99–04–U–00–MKE.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue To Be Used in This Decision: $2,665,000.

Charge Effective Date: May 1, 1995.

Estimated Charge Expiration Date: June 1, 2004.

Class of Air Carriers not Required To Collect PFC'S: No change from previous decision.

Brief Description of Projects Approved for Use: Storm water and deicing system design and construction phase III; Runway 7L/24R extension.

Decision Date: February 9, 1999.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Minneapolis Airports District Office, (612) 713–4363.

Public Agency: Clearfield-Jefferson Counties Regional Airport Authority, Falls Creek, Pennsylvania.

Application Number: 99–3–C–00–DUJ.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $172,710.

Earliest Charge Effective Date: March 1, 2000.

Estimated Charge Expiration Date: June 1, 2003.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less then 1 percent of the total annual enplanements at Dubois-Jefferson County Airport.

Brief Description of Projects Approved for Collection and Use:

Airport beacon
Terminal building expansion and modifications
Runway, taxiway, and apron overlays
PFC application and administration

Brief Description of Projects Approved for Collection Only: Cargo apron expansion.

Decision Date: February 12, 1999.

FOR FURTHER INFORMATION CONTACT: John Carter, Harrisburg Airports District Office, (717) 730–2836.

Public Agency: Friedman Memorial Airport Association, Hailey, Idaho.

Application Number: 99–04–C–00–SUN.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,085,105.

Earliest Charge Effective Date: June 1, 1999.

Estimated Charge Expiration Date: April 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: Part 135 air taxi/commercial operators who conduct operations in air commerce carrying persons for compensation or hire, in aircraft with a seating capacity of 10 or less.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Friedman Memorial Airport.

Brief Description of Project Approved for Collection and Use: Upgrade airport object free area and obstacle free zone to standards.

Brief Description of Project Approved for Use: Upgrade runway safety area.

Decision Date: February 23, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (425) 227–2660.

Public Agency: Wood County Airport Authority, Parkersburg, West Virginia.

Application Number: 99–01–C–00–PKB.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $305,491.

Earliest Charge Effective Date: May 1, 1999.

Estimated Charge Expiration Date: August 1, 2002.

Classes of Air Carriers Not Required To Collect PFC's: (1) Carriers operating under Part 135, (2) carriers operating under Part 91, (3) and any unscheduled carriers operating under Part 121.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each of the approved classes accounts for less than 1 percent of the total annual enplanements at Wood County Airport.

Brief Description of Projects Approved for Collection and Use:

Landslide repair on safety area adjacent to taxiway.
Runway 3/21 rehabilitation.
Runway 10/28 rehabilitation.

Decision Date: February 24, 1999.

FOR FURTHER INFORMATION CONTACT: Elonza Turner, Beckley Airports Field Office, (304) 252–6216.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
97–05–I–01–PLN, Pellston, MI	01/27/99	$17,500	$16,250	09/01/97	09/01/97
98–07–I–01–PLN, Pellston, MI	01/27/99	115,360	107,510	01/01/03	09/01/02
98–01–C–02–LLB, Lubbock, TX	01/28/99	11,187,305	11,564,767	04/01/00	04/01/00
96–02–C–02–CIC, Chico, CA	02/03/99	88,550	95,600	09/01/98	09/01/98
92–01–C–02–PIB, Moselle, MS	02/09/99	152,639	153,636	12/01/98	12/01/98
92–01–C–06–SJC, San Jose, CA	02/12/99	54,361,826	71,744,826	02/01/01	10/01/01

Issued in Washington, DC on March 16, 1999.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 99–6940 Filed 3–19–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–99–5219]

Notice of Request for Clearance of a New Information Collection: National Ferry Study

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget's (OMB) approval for a new information collection related to the Nation's ferry operations. The information to be collected will be used to: (1) Inventory existing ferry operations; (2) determine the potential for new ferry routes; (3) determine the potential for alternative fuel ferries; and (4) determine the potential for high speed ferries.

DATES: Comments must be submitted on or before May 21, 1999.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Gorman, (202) 366–5001, Office of Intermodal and Statewide Planning, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Office hours are from 7:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Ferry Study.

Background: The Transportation Equity Act for the 21st Century (TEA–21), section 1207(c), directs the Secretary of Transportation to conduct a study of ferry transportation in the United States and its possessions. The FHWA's Office of Intermodal and Statewide Planning will conduct a survey of approximately 250 operators of existing ferry services to identify: (1) The existing ferry operations including the location and routes served; (2) the source and amount, if any, of funds derived from Federal, State, or local governments supporting ferry construction or operations; (3) the potential domestic ferry routes in the United States and its possessions and to develop information on those routes; and (4) the potential for use of high speed ferry services and alternative-fueled ferry services. The information will be collected by telephone from approximately 250 operators of ferry services. Before the telephone surveys begin, the Passenger Vessel Association and the American Association of State Highway and Transportation Officials will mail letters to their respective members advising them of the purpose of the survey and encouraging their participation. The survey will request the respondents to provide information such as: (1) The points served; (2) the amount and source of Federal, State, and/or local funds used in the past three years; (3) the type of ownership; (4) the number of passengers and vehicles carried in the past year; (5) any new routes expected to be added within the next five years; and (6) the highways that are connected by the ferries.

Respondents: The respondents to the survey will be 250 operators of existing ferry services in the United States.

Estimated Average Burden per Response: The estimated average burden per response is 20 minutes.

Estimated Total Annual Burden: The estimated total annual burden is 83 hours.

Frequency: This is a one-time survey.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Electronic Access: Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 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*.

Authority: The Transportation Equity Act for the 21st Century, (Pub. L. 105–178), section 1207(c); and 49 CFR 1.48.

Issued on: March 15, 1999.

Michael J. Vecchietti,

Director, Office of Information and Management Services.

[FR Doc. 99–6848 Filed 3–19–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99–5287; Notice 1]

Dailey Body Company; Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 121

We are asking comments from the public on the application by Dailey Body Company of Oakland, California, that five trailers be exempted from Motor Vehicle Safety Standard No. 121 *Air Brake Systems.* The statutory basis for this request is that ''compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.'' 49 U.S.C. 30113.

We are publishing this notice of receipt of the application in accordance with our regulations on temporary exemptions. This does not represent any judgment by us about the merits of the application.

The discussion below is based upon the information that Dailey provided in its application.

Why Dailey Needs an Exemption

Dailey is requesting an exemption for five ''special reel hauling'' trailers that it was unable to complete before March 1, 1998, because of changes requested by its customer, Pacific Gas & Electric Co., (PG&E) during construction of the trailers. On March 1, 1998, an amendment to Federal Motor Vehicle Safety Standard No. 121 *Air Brake*

Systems became effective, requiring these trailers to be equipped with an anti-lock brake system. According to the company, there is no after market kit available to convert the air-over-hydraulic brake system to meet the new requirements of S5.1.6.

Why Compliance Would Cause Dailey Substantial Economic Hardship

Since there is no aftermarket kit available to convert the trailers to a conforming brake system, Dailey would be unable to sell them absent an exemption. It has $250,000 of its operating capital tied up in the trailers, and would have to absorb the loss. This figure is almost equal to its combined net income for the years 1996 and 1997, $252,519.

How Dailey Tried in Good Faith to Comply With Standard No. 121

Dailey's total trailer production in the 12-month period preceding the filing of its application was 43. It was also the final-stage manufacturer and certifier of 938 ''chassis with bodies.'' Other than the five trailers for which it requests exemption, its trailers manufactured since March 1, 1998, comply with Standard No. 121.

Why an Exemption for Dailey Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

Dailey believes that it would be in the public interest ''to keep from imposing a hardship, that could adversely affect employment, on a company that has been successfully building truck body equipment for over 50 years.'' Because only five trailers will be exempted, the risk to the public will be small. The trailers were manufactured to conform with regulations that existed at the time production was scheduled.

How To Comment on Dailey's Application

We invite written comments on Dailey's application. Please send them in two copies, referring to the docket and notice number, to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW, Washington, DC 20590. We shall consider all comments received before the close of business on the comment closing date below. Comments will be available for examination in the docket at the above address both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, we will also consider comments filed after the closing date. When the Administrator has made a decision, we shall publish it in the **Federal Register**.

Comment closing date: April 21, 1999.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: March 16, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–6845 Filed 3–19–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–4966; Notice 2]

TarasPort Trailers, Inc.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

We are granting the application by TarasPort Trailers, Inc., of Sweetwater, Tennessee, for a temporary exemption from Motor Vehicle Safety Standard No. 224 *Rear Impact Protection*, as provided by 49 CFR part 555, finding that ''compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.'' Sec. 555.6(a).

On January 13, 1999, we published a notice inviting comment on TarasPort's application (64 FR 2273). The salient points of the application are set out below.

Why TarasPort Needs a Temporary Exemption

Located in the Sweetwater Industrial Park in Monroe County, Tennessee, TarasPort has manufactured trailers since April 1988. Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards*. TarasPort manufactured a total of 237 trailers in 1997, including ''two models of drop decks equipped with rear deck extenders.'' The extenders deploy in 1-foot increments, up to 3 feet, from the rear of the trailer. S5.1.3 of Standard No. 224 requires that the horizontal member of the rear impact guard must be as close as practicable to the rear extremity of the vehicle, but in no case farther than 305 mm. from it. TarasPort had asked NHTSA to exclude its two trailer models as ''special purpose vehicles,'' but we denied its request. We also determined that the trailers' rear extremity, with the extenders deployed ''would be the rearmost surface on the extenders themselves.'' In order to meet S5.1.3, TarasPort must redesign these models so that the rear face of the horizontal member of the guard will never be more than 305 mm forward of the rearmost surface on the extenders, when the extenders are in any position in which they can be placed when in transit. It has asked for a 2-year exemption in order to do so.

Why Compliance Would Cause TarasPort Substantial Economic Hardship

TarasPort employs 16 people, including its two working owners. An increasing amount of its sales is comprised of the two extended-deck trailers, from 55% in 1997 to 63% in the first two quarters of 1998. Using its existing staff, the company estimates that it needs 18 to 24 months of design and testing to bring the trailers into compliance with S5.1.3, and that the modifications required will cost $1800 to $2000 per trailer.

If the application is denied, TarasPort would have to discontinue production for 18 to 24 months, or hire an engineering consulting firm to possibly reduce that time, at a fee of $80 to $120 an hour. It would be forced to lay off a majority of its employees, and it would lose the market and established customer base that it has achieved as a niche producer over the 10 years of its existence.

According to its financial statements, TarasPort has had a small net income in each of its past three fiscal years, though the income each year has been substantially less than the year before. The net income for 1997 was $87,030.

How TarasPort Has Tried To Comply With the Standard in Good Faith

Most of TarasPort's trailers have low deck heights and rear ramp compartments ''which only compound rear impact compliance problems.'' Nevertheless, the company was able to bring its designs into compliance by Standard No. 224's effective date, with the exception of the two extender designs. These trailers comply when the extenders are not in use. The company tested mounting the guard directly on the extenders ''so it would move out and thus comply,'' but found that this method of mounting ''would not absorb the level of energy'' required by Standard No. 223. TarasPort hoped that we would consider the extenders to be load overhang or exempt as a special purpose vehicle, but we denied this request on May 22, 1998.

Why Exempting TarasPort Would Be Consistent With the Public Interest and Objectives of Motor Vehicle Safety

A denial would adversely affect the company's employees, customers, and the local economy in Monroe County. TarasPort argued that the motor vehicle safety standards

> were created with the general public's well being in mind. Assisting our company to comply to those standards only insures public safety. Compliance rather than enforcement is consistent with the objectives of the National Traffic and Motor Vehicle Safety Act.

Comments Filed in Response to the Application Notice

No comments were filed in response to the notice published on January 13, 1999.

Discussion of TarasPort's Application

When TarasPort learned in May 1998 that its two trailer models would have to comply with Standard No. 224, it filed its application for exemption with us the following month. Because we needed to resolve TarasPort's requests for confidentiality, we were unable to move forward with its exemption request until January 1999. Accordingly, we must assume that the company has been experiencing the hardships foreseen in its application.

These hardships are loss of income from reduced production, and the possible layoff of some of its 16 employees as a result. The company's application indicated that it would find it more economical to engineer a solution in-house over an 18 to 24 month time period than to commit it to an engineering firm for a costly solution in something less than that time. The company's net income has been decreasing in each of its three past fiscal years, and presumptively did so in 1998 when it suspended production of its two models of drop deck trailers equipped with rear deck extenders. We believe that TarasPort has demonstrated that requiring immediate compliance would cause it substantial economic hardship.

We note that TarasPort, in spite of limited resources, was able to bring all its other trailers into conformity with Standard No. 224 by its effective date. We believe that the company has therefore made a good faith effort to comply with the standard.

TarasPort contributes to its local economy, even though it is a small business. It is in the public interest to encourage small businesses which add diversity to the marketplace. The temporary exemption of a small number of trailers from the underride standard will not have a significant negative effect upon safety.

As of the end of June 1998, the company estimated that it would need 18 to 24 months to comply with the standard. This indicates that the company believes it can achieve compliance between January 1 and July 1, 2000. We are therefore giving it an exemption until July 1, 2000.

The Administrator's Findings

On the basis of the arguments and discussions above, I find that providing TarasPort an exemption from Standard No. 224 is consistent with the public interest and the objectives of 49 U.S.C. Chapter 301—Motor Vehicle Safety, and that compliance with Standard No. 224 would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

NHTSA Temporary Exemption No. 99–2

TarasPort Trailers, Inc., is hereby granted NHTSA Temporary Exemption No. 99–2, from 49 CFR 571.224 Standard No. 224 Rear Impact Protection, expiring July 1, 2000. This exemption is restricted to drop deck trailers equipped with rear deck extenders.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on: March 16, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–6846 Filed 3–19–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Sunshine Act Meeting

Ex Parte No. 333—Meetings of the Board

TIME & DATE: 10:00 a.m. Thursday, March 25, 1999.

PLACE: Hearing Room, Surface Transportation Board 1925 K Street, NW, Washington, DC 20423.

STATUS: The Board will meet to discuss among themselves the agenda item listed below. Although the conference is open for public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED: Finance Docket No. 33556, Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated— control— Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad and Finance Docket No. 33556 (Sub-No. 1), Canadian National Railway Company, Illinois Central Railroad Company, The Kansas City Southern Railway Company, and Gateway Western Railway Company— Terminal Trackage Rights—Union Pacific Railroad Company and Norfolk & Western Railway Company.

CONTACT PERSON FOR MORE INFORMATION: Dennis Watson, Office of Congressional and Public Services, Telephone: (202) 565–1594, TDD: (202) 565–1695.

Dated: March 18, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–7113 Filed 3–18–99; 3:15 pm]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 9, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 21, 1999, to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0068.

Form Number: Customs Form 28.

Type of Review: Extension.

Title: Request for Information.

Description: Customs Form 28 is used by Customs personnel to request additional information from importers when the invoice or other documentation provide insufficient information for Customs to carry out its responsibilities to protect revenues.

Respondents: Business or other for-profit, Individuals or households. Not-for-profit institutions, Federal Government.

Estimated Number of Respondents: 60,000.

Estimated Burden Hours Per Respondent: 33 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 30,000 hours.

OMB Number: 1515–0208.

Form Number: None.

Type of Review: Extension.

Title: NAFTA Duty Deferral.

Description: The North American Free Trade Agreement Duty Deferral Program prescribe the documentary and other requirements that must be followed when merchandise is withdrawn from a U.S. duty-referral program for exportation to another NAFTA country.

Respondents: Business or other for-profit, Individuals or households. Not-for-profit institutions, Federal Government.

Estimated Number of Respondents: 600.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 400 hours.

OMB Number: 1515–0220.

Form Number: None.

Type of Review: Extension.

Title: Lay Order Period—General Order Merchandise.

Description: This collection is required to ensure that the operator of an arriving carrier, or transfer agency shall notify a bonded warehouse proprietor of the presence of merchandise that has remained at the place of arrival or unlading without entry beyond the time period provided for by regulation.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 300.

Estimated Burden Hours Per Respondent: 15 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 7,500 hours.

Clearance Officer: J. Edgar Nichols, (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, N.W., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–6932 Filed 3–19–99; 8:45 am]

BILLING CODE 4820–02–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 16, 1999.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 21, 1999, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1629.

Form Number: IRS Form 8867.

Type of Review: Extension.

Title: Paid Preparer's Earned Income Credit Checklist.

Description: Form 8867 helps preparers meet the due diligence requirements of Code section 6695(g), which was added by section 1085(a)(2) of the Taxpayer Relief Act of 1997. Paid preparers of Federal income tax returns or claims for refund involving the earned income credit (EIC) must meet the due diligence requirements in determining if the taxpayer is eligible for the EIC and the amount of the credit. Failure to do so could result in a $100 penalty for each failure. Completion of Form 8867 is one of the due diligence requirements.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,100,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—13 min.
Learning about the law or the form—8 min.
Preparing the form—21 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 9,372,661 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 99–6933 Filed 3–19–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Order ATF O 1130.5]

Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 24, Wine

1. *Purpose*. This order delegates certain authorities of the Director to subordinate ATF officers and prescribes the subordinate ATF officers with whom persons file documents which are not ATF forms.

2. *Cancellation*. ATF O 1100.78B, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR part 240, Wine, dated 4/30/84, and ATF O 1100.97A, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR part 231, Taxpaid Wine Bottling Houses, dated 4/5/84, are canceled.

3. *Background*. Under current regulations, the Director has authority to take final action on matters relating to wine. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

4. *Delegations*. Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120–1 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701–9, this ATF order delegates certain authorities to take final action prescribed in 27 CFR Part 24 to subordinate officers. Also, this ATF order prescribes the subordinate officers with whom applications, notices, and reports required by 27 CFR part 24, which are not ATF forms, are filed. The attached table identifies the regulatory sections, documents and authorized ATF officers. The authorities in the table may not be redelegated. An ATF organization chart showing the directorates involved in this delegation order has been attached.

John W. Magaw,

Director.

TABLE OF AUTHORITIES, DOCUMENTS TO BE FILED AND AUTHORIZED ATF OFFICIALS

Regulatory section	Officer(s) authorized to act or receive document
§ 24.20(a)	Chief, Regulations Division.
§ 24.21	Chief, Regulations Division.
§ 24.22(a)	Chief, Regulations Division. If the alternate method does not affect an ATF approved formula, or import or export recordkeeping, Chief, National Revenue Center (NRC) may act upon the same alternate method that has been approved by the Chief, Regulations Division.
§ 24.22(b)	Chief, Regulations Division, or Chief, NRC.
§ 24.22(c)	Chief, Regulations Division. If the alternate method does not affect an ATF approved formula, or import or export recordkeeping, Chief, National Revenue Center (NRC) may act upon the same alternate method that has been approved by the Chief, Regulations Division.
§ 24.25(a)	Director of Industry Operations.
§ 24.25(b)	Director of Industry Operations.
§ 24.25(c)	Area Supervisor.
§ 24.25(d)	Director of Industry Operations.
§ 24.26	Section Chief, NRC, to approve (by affixing the signature of the Director) applications, qualifying documents and any other documents required by or filed under this part, upon the recommendation of the Area Supervisor; and to approve claims of more than $5,000 for remission, abatement, credit, or refund of tax.
§ 24.26	Chief, Technical Services, to approve (by affixing the signature of the Director) applications, qualifying documents and any other documents required by or filed under this part, upon the recommendation of the Area Supervisor; and to approve claims of more than $5,000 for remission, abatement, credit, or refund of tax other than special occupational tax.
§ 24.26	Unit Supervisor, NRC, to approve (by affixing the signature of the Director) claims of $5,000 or less for remission, abatement, credit, or refund of tax.
§ 24.26	Technical Section Supervisor to approve (by affixing the signature of the Director) claims of more than $5,000 for remission, abatement, credit, or refund of tax other than special occupational tax.
§ 24.27	Area Supervisor.
§ 24.28	Area Supervisor.
§ 24.29	Area Supervisor, Unit Supervisor, NRC, or Technical Section Supervisor.
§ 24.30	Director of Industry Operations to require that operations be supervised by any number of ATF inspectors.
§ 24.31	Area Supervisor to require submission to an inspector; or Unit Supervisor, NRC, or Technical Section Supervisor to require submission to a specialist, copies of prescribed transaction forms, records, reports, or source records.
§ 24.32	Area Supervisor.
§ 24.35	Inspector, Special Agent or Specialist.
§ 24.36	Area Supervisor.
§ 24.37	Inspector, Special Agent or Specialist.
§ 24.40	Inspector, Special Agent or Specialist.
§ 24.41	Area Supervisor to require office facilities for use of Inspector, Special Agent or Specialist.
§ 24.52(a) and (b)	Section Chief, NRC, or Chief, Technical Services.
§ 24.54(c)	Inspector, Special Agent or Specialist.
§ 24.60	Area Supervisor, Section Chief, NRC, or Chief, Technical Services.
§ 24.62	Section Chief, NRC, or Chief, Technical Services to notify the proprietor of a proposed tax assessment of more than $5,000 and to take immediate jeopardy assessment action pursuant to 26 U.S.C. 6861.
§ 24.62	Unit Supervisor, NRC to notify the proprietor of a proposed tax assessment of $5,000 or less.
§ 24.62	Technical Section Supervisor to notify the proprietor of a proposed tax assessment of $5,000 or less other than special occupational tax.
§ 24.65(a), (b) and (c)	Section Chief, NRC, or Chief, Technical Services.
§ 24.66(a)	Section Chief, NRC, or Chief, Technical Services.
§ 24.69(b)	Area Supervisor, Unit Supervisor, NRC, or Technical Section Supervisor.
§ 24.70	Section Chief, NRC, or Chief, Technical Services to notify a claimant of an allowance of a tax credit of more than $5,000.
§ 24.70	Unit Supervisor, NRC, to notify a claimant of an allowance of a tax credit of $5,000 or less.
§ 24.70	Technical Section Supervisor to notify a claimant of an allowance of a tax credit of $5,000 or less for other than special occupational tax.
§ 24.77(b)	Section Chief, NRC, or Chief, Technical Services to receive application to conduct experimental wine operations and to approve (by affixing the signature of the Director) upon the recommendation of the Area Supervisor, such an application.
§ 24.77(b)	Area Supervisor, Unit Supervisor, NRC, or Technical Section Supervisor to require as part of the application, additional information as may be necessary to determine whether the application should be approved.
§ 24.77(c)	Section Chief, NRC, or Chief, Technical Services to receive application to procure wine spirits for an experimental winery and to approve such application, upon the recommendation of the Area Supervisor.
§ 24.77(d)	Inspector, Special Agent or Specialist to examine qualifying documents, applications, disposition and other required records.
§ 24.77(d)	Area Supervisor to require reports concerning wine or wine spirits.
§ 24.77(e)	Area Supervisor.
§ 24.80	Specialist, Formula and Processing Section.
§ 24.81	Chief, Formula and Processing Section, to receive superceded formula.
§ 24.81	Chief, Formula and Processing Section, or Area Supervisor to require a proprietor to file a statement of process, in addition to the requirements of ATF F 5120.29, or any other data to determine whether the formula should be approved or whether the approval should be continued.
§ 24.82	Chief, Formula and Processing Section, or Area Supervisor.

TABLE OF AUTHORITIES, DOCUMENTS TO BE FILED AND AUTHORIZED ATF OFFICIALS—Continued

Regulatory section	Officer(s) authorized to act or receive document
§ 24.87	Chief, Alcohol and Tobacco Laboratory.
§ 24.91	Inspector, Special Agent or Specialist.
§ 24.91(c)	Section Chief, NRC, or Chief, Technical Services, to receive application to convey wine or spirits between different portions of the same bonded premises and to approve (by affixing the signature of the Director) such application, upon the recommendation of the Area Supervisor.
§ 24.96(a)	Area Supervisor.
§ 24.103	Section Chief, NRC, or Chief, Technical Services to receive application to conduct other operations and to approve (by affixing the signature of the Director) such application, upon the recommendation of the Area Supervisor or to withdraw such authorization for, the conduct of other operations on wine premises, upon the recommendation of the Area Supervisor; and Area Supervisor to make inquiries as necessary.
§ 24.105	Area Supervisor, Unit Supervisor, NRC, or Technical Section Supervisor.
§ 24.107	Unit Supervisor, NRC, or Technical Section Supervisor.
§ 24.108	Section Chief, NRC, or Chief, Technical Services.
§ 24.109(k)	Area Supervisor, Unit Supervisor, NRC, or Technical Section Supervisor.
§ 24.110(c)(1)	Area Supervisor, Unit Supervisor, NRC, or Technical Section Supervisor.
§ 24.110(d)	Area Supervisor, Unit Supervisor, NRC, or Technical Section Supervisor to require additional documents.
§ 24.110(d)	Inspector, Special Agent or Specialist to request examination of documents.
§ 24.111	Area Supervisor, Unit Supervisor, NRC, or Technical Section Supervisor.
§ 24.115	Unit Supervisor, NRC, or Technical Section Supervisor.
§ 24.116	Section Chief, NRC, or Chief, Technical Services.
§ 24.117	Inspector, Special Agent or Specialist.
§ 24.120	Section Chief, NRC, or Chief, Technical Services.
§ 24.123	Section Chief, NRC, or Chief, Technical Services.
§ 24.124	Section Chief, NRC, or Chief, Technical Services, as recommended by Area Supervisor.
§ 24.125	Section Chief, NRC, or Chief, Technical Services.
§ 24.127	Specialist, Formula and Processing Section.
§ 24.131	Section Chief, NRC, or Chief, Technical Services to receive proprietor's notice of change in building construction or use of premises.
§ 24.131	Area Supervisor, Unit Supervisor, NRC, or Technical Section Supervisor to require immediate amendment of ATF F 5120.25 for a change in building construction and use of premises.
§ 24.135(b)	Section Chief, NRC, or Chief, Technical Services to receive qualifying documents to alternate bonded wine premises as taxpaid wine bottling house premises or taxpaid wine premises, or other premises.
§ 24.135(b)(4)	Area Supervisor, Unit Supervisor, NRC, or Technical Section Supervisor to require any other document or additional information for premises alternation.
§ 24.135(c) and (e)	Section Chief, NRC, or Chief, Technical Services, upon the recommendation of the Area Supervisor, to approve alternation of wine premises; to approve alternate methods of identifying wine prior to alternation of wine premises; and to withdraw authorization for the alternation of premises.
§ 24.135(d)	Area Supervisor.
§ 24.137(a) and (c)	Section Chief, NRC, or Chief, Technical Services to approve alternate use of the wine premises purposes (by affixing the signature of the Director) upon the recommendation of the Area Supervisor.
§ 24.137(b)(3)	Area Supervisor, Unit Supervisor, NRC, or Technical Section Supervisor.
§ 24.140	Section Chief, NRC, or Chief, Technical Services.
§ 24.141	Section Chief, NRC, or Chief, Technical Services.
§ 24.145	Section Chief, NRC, or Chief, Technical Services.
§ 24.150	Unit Supervisor, NRC, or Technical Section Supervisor.
§ 24.154	Area Supervisor, Unit Supervisor, NRC, or Technical Section Supervisor.
§ 24.155	Section Chief, NRC, or Chief, Technical Services.
§ 24.157	Section Chief, NRC, or Chief, Technical Services.
§ 24.159	Section Chief, NRC, or Chief, Technical Services.
§ 24.165	Area Supervisor.
§ 24.166	Area Supervisor.
§ 24.167	Area Supervisor.
§ 24.169	Area Supervisor.
§ 24.170(a)	Area Supervisor.
§ 24.170(b)	Area Supervisor.
§ 24.183	Area Supervisor.
§ 24.191	Area Supervisor.
§ 24.230	Area Supervisor.
§ 24.231	Area Supervisor.
§ 24.235(b)	Area Supervisor.
§ 24.236	Area Supervisor.
§ 24.242	Chief, Regulations Division.
§ 24.245	Chief, Formula and Processing Section.
§ 24.246(a)(1)	Assistant Director (Alcohol and Tobacco).
§ 24.247	Assistant Director (Alcohol and Tobacco).
§ 24.248	Assistant Director (Alcohol and Tobacco).
§ 24.249(a) and (b)	Chief, Regulations Division.
§ 24.249(c)	Area Supervisor.
§ 24.250(a), (b)(9), (c) and (d)	Chief, Regulations Division.
§ 24.259(c)	Inspector, Special Agent or Specialist.
§ 24.260	Section Chief, NRC, or Chief, Technical Services.
§ 24.265	Area Supervisor.

TABLE OF AUTHORITIES, DOCUMENTS TO BE FILED AND AUTHORIZED ATF OFFICIALS—Continued

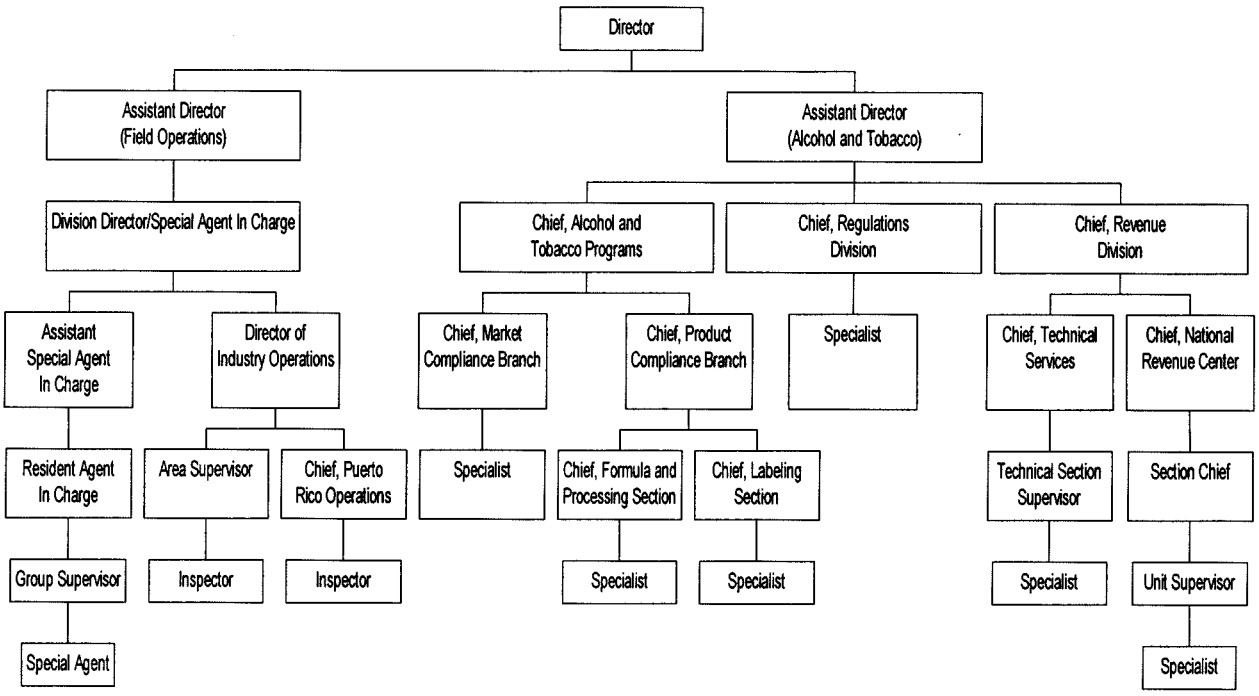
Regulatory section	Officer(s) authorized to act or receive document
§ 24.267	Area Supervisor.
§ 24.268	Area Supervisor.
§ 24.272(b)	Section Chief, NRC, or Chief, Technical Services.
§ 24.272(e)	Unit Supervisor, NRC, or Technical Section Supervisor.
§ 24.273(b)	Section Chief, NRC, or Chief, Technical Services.
§ 24.276	Section Chief, NRC, or Chief, Technical Services.
§ 24.278(h)	Section Chief, NRC, or Chief, Technical Services.
§ 24.279(a)	Unit Supervisor, NRC, or Technical Section Supervisor.
§ 24.291(c)	Inspector, Special Agent or Specialist.
§ 24.293(b)	Inspector, Special Agent or Specialist.
§ 24.294(a)	Inspector, Special Agent or Specialist to supervise destruction of wine; and Area Supervisor to receive and authorize application to destroy wine.
§ 24.296(a)	Area Supervisor.
§ 24.296(b)	Chief, Regulations Division.
§ 24.297(g)	Area Supervisor, Section Chief, NRC, or Chief, Technical Services.
§ 24.298(a)	Area Supervisor, Section Chief, NRC, or Chief, Technical Services.
§ 24.300(b)	Inspector, Special Agent or Specialist.
§ 24.300(d)	Director of Industry Operations.
§ 24.300(e)(3)	Inspector, Special Agent or Specialist.
§ 24.300(g)(2)	Section Chief, NRC, or Chief, Technical Services, to receive notice to file an annual ATF F 5120.17 for the remaining portion of the calendar year.
§ 24.300(g)(2)	Area Supervisor, Section Chief, NRC, or Chief, Technical Services to require monthly filing of a report of bonded wine premises operations for any proprietor otherwise eligible for annual filing.
§ 24.304	Inspector, Special Agent or Specialist.
§ 24.313	Section Chief, NRC, or Chief, Technical Services.

BILLING CODE 4810–31–P

ATF O 1130.5

Table of Authorities, Documents to Be Filed and Authorized ATF Officials

ATF Organization



This is not a complete organizational chart of ATF

[FR Doc. 99–6853 Filed 3–19–99; 8:45 am]
BILLING CODE 4810–31–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209673–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), 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, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209673–93 (TD 8700), Mark to Market for Dealers in Securities (§§ 1.475(b)–4, and 1.475(c)–1).

DATES: Written comments should be received on or before May 21, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Mark to Market for Dealers in Securities.

OMB Number: 1545–1496.

Regulation Project Number: REG–209673–93.

Abstract: Under section 1.475(b)–4, the information required to be recorded is required by the IRS to determine whether exemption from mark-to-market treatment is properly claimed, and will be used to make that determination upon audit of taxpayers' books and records. Also, under section 1.475(c)–1(a)(3)(iii), the information is necessary for the Service to determine whether a consolidated group has elected to disregard inter-member transactions in determining a member's status as a dealer in securities.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,400.

Estimated Time Per Respondents: 52 minutes.

Estimated Total Annual Burden Hours: 2,950.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 15, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–6820 Filed 3–19–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–62–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), 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, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final and temporary regulations, IA–62–91 (TD 8482), Capitalization and Inclusion in Inventory of Certain Costs, (Regulation § 1.263A).

DATES: Written comments should be received on or before May 21, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Capitalization and Inclusion in Inventory of Certain Costs.

OMB Number: 1545–0987.

Regulation Project Number: IA–62–91.

Abstract: The requirements are necessary to determine whether taxpayers comply with the cost allocation rules of Internal Revenue Code section 263A and with the requirements for changing their methods of accounting. The information will be used to verify taxpayers' changes in methods of accounting.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: The estimated annual reporting and recordkeeping burden per respondent varies from 1 hour to 9 hours, depending on individual circumstances.

Estimated Total Annual Burden Hours: 100,000 hours.

The following paragraph applies to all of the collections of information covered by this notice:

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

Books or records relating to a collection of information must be retained as long as their contents may

become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–6821 Filed 3–19–99; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Proposed Collection; Comment Request

SUMMARY: The United States Information Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on an information collection requirement concerning the public use forms entitled ''Exchange Visitor Program Application'', and ''Update of Information on Exchange Visitor Program'', under OMB control number 3116–0210. 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)).

Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility; (b) the accuracy of the Agency's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden on the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information to the United States Information Agency, M/AOL, 301 Fourth Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503.

DATES: Comments are due on or before May 21, 1999.

COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs, of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: The Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/AOL, 301 Fourth Street, S.W., Washington, D.C. 20547, internet address: JGiovett@USIA.GOV, telephone: (202) 619–4408; and for OMB review: Mr. Jeff Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503, Telephone (202) 395–5871.

SUPPLEMENTARY INFORMATION: The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency (USIA) under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public law 87–256 and 22 CFR Part 514, Exchange Visitor Program; Final Rule as amended. Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0210) is estimated to average sixty (60) minutes per response for the IAP–37 and twenty (20) minutes per response for the IAP–87, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. For the IAP–37, responses are voluntary and respondents are requested to respond annually. For the IAP–87, responses are mandatory and respondents are requested to respond on an as needed basis.

Current Action: USIA is requesting a three-year extension of the currently approved information collection under OMB control number 3116–0210 which expires June 30, 1999.

Title(s): ''Exchange Visitor Program Application'', and ''Update of Information on Exchange Visitor Program Sponsor''.

Form Numbers: IAP–37, IAP–87.

Abstract: Under the requirements of 22 CFR Part 514, Exchange Visitor Program; Final Rule as amended and the Mutual Educational and Cultural Exchange Act of 1961, USIA has been delegated the authority to designate Sponsors for the Exchange Visitor Program for U.S. Government agencies, public and private educational and cultural exchange. The purpose of the exchange visitor program is intended to promote interchanges of persons engaged in Education, Arts, Sciences and to promote mutual understanding between the people of the U.S. and other countries. The USIA IAP–37 form is used when organizations wishing to sponsor exchange visitors from abroad apply to USIA for a designation that will permit them to function as sponsors. The USIA IAP–87 form is used by the Exchange Visitor Sponsors to change the name of their institution and/or organization, the names of the personnel involved, addresses, or telephone numbers. The forms is also used to order a supply of additional IAP forms, code books, or to cancel the program.

Proposed Frequency of Responses

No. of Respondents—1,550.

Recordkeeping Hours—1.20.

Total Annual Burden—1,000.

Dated: March 16, 1999.

Rose Royal,

Federal Register Liaison.

[FR Doc. 99–6812 Filed 3–19–99; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Environmental Hazards, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held on Wednesday and Thursday, May 19–20, 1999, in room 230 of VA Central Office, 810 Vermont Avenue, N.W., Washington, DC 20420. The meeting will convene at 9:00 a.m. and adjourn at 5:00 p.m. on both days.

The purpose of the meeting is to review information relating to the health effects of exposure to ionizing radiation. The major items on the agenda for both days will be discussions and analyses of medical and scientific papers concerning the health effects of exposure to ionizing radiation. On the basis of their analyses and discussions, the Committee may make recommendations to the Secretary concerning diseases that are the result of exposure to ionizing radiation. The agenda for the second day will include planning future Committee activities and assignment of tasks among the members.

The meeting is open to the public on both days. Those who wish to attend or submit written questions or prepared statements for review by the Committee should contact Ersie Farber-Collins of the Department of Veterans Affairs, Compensation and Pension Service, 810 Vermont Avenue, N.W., Washington, DC 20420, by May 12, 1999. Ms. Farber-Collins may also be reached at 202–273–7268.

Dated: March 12, 1999.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 99–6857 Filed 3–19–99; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 64, No. 54

Monday, March 22, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection of Information; Mouthing Behavior Study; Comment Request

Correction

In notice document 99–5980 beginning on page 12153, in the issue of Thursday, March 11, 1999, make the following correction:

On page 12153, in the second column, under the heading **DATES:**, in the third line, ''June 9, 1999'' should read ''May 10, 1999''.

[FR Doc. C9–5980 Filed 3–19–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Floodplain and Wetlands Involvement Notification for the Pond B Dam Repair Project at the Savannah River Site (SRS)

Correction

In notice document 99–3653 beginning on page 7636 in the issue of Tuesday, February 16, 1999, make the following corrections:

1. On page 7636, in the second column, under **ADDRESSES**, in the third line ''Andrew R. Grainer'' should read ''Andrew R. Grainger''.

2. On the same page, in the third column, in the third complete paragraph, five lines from the bottom ''previous'' should read ''pervious''.

3. On page 7637, in the first complete paragraph, starting seven lines from the bottom ''(EA) being prepared for the proposed action in accordance with the requirements'' was mistakenly repeated.

[FR Doc. C9–3653 Filed 3–19–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Monday
March 22, 1999

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 173, 177, 178, 180

Hazardous Materials; Revision to Regulations Governing Transportation and Unloading of Liquefied Compressed Gases; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, 177, 178, 180

[Docket No. RSPA–97–2718 (HM–225A)]

RIN 2137–AD07

Hazardous Materials: Revision to Regulations Governing Transportation and Unloading of Liquefied Compressed Gases

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA is proposing revisions to regulations applicable to the transportation and unloading of liquefied compressed gases. The revisions include new inspection, maintenance, and testing requirements for cargo tank discharge systems, including delivery hose assemblies, and revised attendance requirements applicable to liquefied petroleum gas and anhydrous ammonia to take account of certain unique operating characteristics. The proposed attendance requirements provide a greater level of confidence that a qualified person attending the unloading operation can quickly identify and stop an unintentional release. Further, RSPA is proposing revised requirements for cargo tank emergency discharge control equipment to provide a clear performance standard for passive emergency discharge control equipment that shuts down unloading operations without human intervention. The revised requirements also provide for a remote capability for certain cargo tanks to enable a person attending the unloading operation to shut off the flow of product when away from the motor vehicle during delivery. RSPA is proposing a two-year period for development and testing of emergency discharge control technology. After two years, the proposal would require newly manufactured MC 331 cargo tank motor vehicles to be equipped with emergency discharge control equipment that complies with the proposed performance standards; MC 330, MC 331 and certain nonspecification cargo tank motor vehicles already in service would be retrofitted at their first scheduled pressure test after the two-year period. These proposals are intended to reduce the risk of an unintentional release of a liquefied compressed gas during unloading, assure prompt detection and control of an unintentional release, and make the regulatory requirements easier to understand and comply with.

DATES: Submit comments on or before April 21, 1999.

ADDRESSES: Address written comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. Identify the docket number RSPA–97–2718 at the beginning of your comments and submit two copies. If you want to receive confirmation of receipt of your comments, include a self-addressed, stamped postcard. Comments also may be submitted by e-mail to rules@rspa.dot.gov.

The Dockets Management System is located on the Plaza Level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. In addition, you can review comments by accessing the docket management system through the DOT home page (http://dms.dot.gov).

FOR FURTHER INFORMATION CONTACT: Jennifer Karim or Susan Gorsky, Office of Hazardous Materials Standards, Research and Special Programs Administration, (202) 366–8553; or Nancy Machado, Office of the Chief Counsel, Research and Special Programs Administration, (202) 366–4400.

SUPPLEMENTARY INFORMATION:

List of Topics

I. Background
II. Negotiated Rulemaking Committee and its Activities
III. Statement of the Issues
IV. Proposed Revisions
A. Prevention
B. Identification
C. Mitigation
D. Implementation Schedule
E. Miscellaneous
F. Section-by-Section Review
V. Regulatory Analyses and Notices

I. Background

On December 13, 1996 (61 FR 65480), the Research and Special Programs Administration (RSPA, ''we'') and the Federal Highway Administration (FHWA) published advisory guidance on emergency discharge control systems on MC 330, MC 331 and certain nonspecification cargo tanks used to transport liquefied compressed gases. This followed an incident involving the unintentional release of propane from an MC 331 cargo tank motor vehicle during unloading.

On February 19, 1997 (RSPA–97–2133 (HM–225), 62 FR 7638), RSPA adopted an interim final rule establishing certain temporary alternative regulations under which cargo tanks could remain in service while RSPA and FHWA evaluated this incident and other situations in which liquefied compressed gases were released unintentionally from cargo tanks during unloading operations. In particular, the interim final rule amended the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) by establishing a new § 171.5, which set forth conditions under which affected cargo tanks, without certification and demonstrated performance of their emergency discharge control systems, could continue in service.

On August 18, 1997 (62 FR 44038), RSPA published a final rule and responded to petitions for reconsideration of the interim final rule. The final rule reiterated most of the elements of the interim final rule and extended it as a continuing temporary regulation.

Also on August 18, 1997 (62 FR 44059), RSPA published an advance notice of proposed rulemaking (ANPRM) in Docket No. RSPA–97–2718 (HM–225A). This ANPRM solicited public comment on a series of specific topics. RSPA received more than 150 comments addressing federal agency jurisdiction; active and passive emergency discharge control systems; suggestions for modification of cargo tank discharge systems; hoses, hose assemblies, and hose management; and vehicle attendance requirements.

On September 19, 1997 (62 FR 49171), RSPA issued additional advisory guidance in Docket No. RSPA–97–2133 (HM–225), in response to a petition for reconsideration and a request for clarification.

On December 10, 1997 (62 FR 65187), RSPA published a second final rule that made changes to the August 18, 1997, final rule, responded to petitions for reconsideration, and made certain corrections and clarifications.

On June 4, 1998 (63 FR 30572), RSPA proposed to establish a negotiated rulemaking committee under Docket RSPA–97–2718 (HM–225A) and announced a public meeting to discuss that proposal. The negotiated rulemaking process is defined in 5 U.S.C. 561 *et seq.*

The above-referenced rulemaking documents contain a thorough discussion of the issues that led to issuance of the temporary regulation in § 171.5, and to establishment of a negotiated rulemaking committee to develop recommendations for changes to the applicable regulations. These prior rulemaking publications and the

public comments on them (see RSPA–97–2133) are hereby incorporated into this docket by reference.

II. Negotiated Rulemaking Committee and its Activities

On July 16,1998 (63 FR 38456), RSPA established a negotiated rulemaking committee (the Committee) to develop recommendations for alternative safety standards for preventing and mitigating unintentional releases of liquefied compressed gases during the unloading of cargo tank motor vehicles.

In a negotiated rulemaking, representatives of interests affected by a regulation meet to discuss the safety issues and to identify potential solutions. The group attempts to reach consensus on a proposed solution and prepares a recommendation for a notice of proposed rulemaking to be made by the agency. This process is intended to give parties the opportunity to find creative solutions, improve the information data base for decisions, produce more acceptable rules, enhance compliance, and reduce the likelihood of court challenges.

For this rulemaking, in addition to the Department of Transportation (DOT), the Committee consists of persons who represent the interests affected by this rulemaking, including businesses that transport and deliver liquefied petroleum gases, anhydrous ammonia and other liquefied compressed gases; manufacturers and operators of cargo tanks and vehicle components; and state and local public safety and emergency response agencies. Particular care was taken to identify any unique interests that were determined to be significantly affected by the proposed rule and ensure that they were fully represented on the Committee.

The members of the Committee are:

1. Department of Transportation—Edward Mazzullo, Research and Special Programs Administration
2. National Propane Gas Association—Charles Revere, Revere Gas and Appliance
3. The Fertilizer Institute—Charles Rosas, Farmland Industries
4. National Tank Truck Carriers—Clifford Harvison
5. Compressed Gas Association—Ronald McGrath
6. National Fire Protection Association—Theodore Lemoff
7. Propane Distribution (Small)—Mike Gorham, Northwest Gas, and Lin Johnson, Lin's Propane
8. Propane Distribution (Large)—Russell Rupp, Suburban Propane, and Ken Faulhaber, Ferrellgas
9. Anhydrous Ammonia/Dual Use Anhydrous Ammonia-Propane (Small)—Charles Whittington, Grammar Industries
10. Anhydrous Ammonia/Dual Use Anhydrous Ammonia-Propane (Large)—Jean Trobec and Cliff Shoettmer, Growmark; and Jim York and Tom Stene, National Private Truck Council
11. State Safety Enforcement Agencies—Steve Hermann, Cooperative Hazardous Materials Enforcement Development (COHMED), and Eric Adair, Commercial Vehicle Safety Alliance (CVSA)
12. State Safety Regulatory Agencies—Vicki O'Neill, Bureau of Liquefied Petroleum Gas Inspections/Florida Department of Agriculture and Consumer Services, and Ronny Coleman, California State Fire Marshal
13. State/Local Emergency Response Agencies and Fire Services—Ronald Dykes, International Association of Fire Chiefs
14. Cargo Tank Manufacturers (Transports)—Mike Pitts, Mississippi Tank
15. Cargo Tank Manufacturers (Bobtails)—David Auxier, Bulk Tank and Transport
16. Technology—Jim Griffin, Fisher Controls

The Committee was chaired by Philip J. Harter, Esq., a trained facilitator. The role of the facilitator was to apply proven consensus building techniques to the negotiations. The facilitator was not involved with the substantive development of the standard. Rather, his role was to: (1) chair the meetings of the committee in an impartial manner; (2) impartially assist the members of the committee in conducting discussions and negotiations; (3) act as disclosure officer for committee records under the Freedom of information Act (FOIA); and (4) keep minutes of all committee meetings in accordance with the Federal Advisory Committee Act (FACA) requirements.

In some instances, work groups were formed around particular issues, and certain members were identified as spokespersons for these groups.

Interested parties who were not selected to membership on the Committee were provided an opportunity to contribute to the negotiated rulemaking effort in the following ways:

- They were provided with the minutes of Committee meetings and could submit written comments to the Committee as appropriate.
- They could attend the Committee meetings, which were open to the public, caucus with the Committee member representing their interest on the Committee, and were provided opportunities to address the Committee as time permitted.
- They could participate in the workgroups established by the Committee. These informal workgroups were used to assist in addressing various technical matters (e.g., developing standards for an emergency discharge control system or verifying certain engineering procedures, or commenting on particular matters before the Committee) to facilitate Committee deliberations. They also assisted in drafting regulatory text. The workgroups were made up of Committee members and other parties who had expertise or a particular interest in the technical matter(s) being discussed.

The Committee met in plenary and working sessions on six occasions. Among the materials considered by the Committee in developing the proposals in this NPRM are the prior rulemaking actions in RSPA–97–2133, public comments filed in response to those actions, information provided by regulatory and enforcement officials, and incident data. The Committee agrees that the costs imposed by the proposed rule will be off-set by the benefits. The Committee had no role in preparing DOT's ''Preliminary Regulatory Evaluation'' or ''Environmental Assessment'' and did not consider them in its deliberations.

III. Statement of the Issues

The goal of all parties to this negotiated rulemaking was to enhance safety in transportation through improvements in the regulations governing the unloading of liquefied compressed gases from MC 330, MC 331, and certain nonspecification cargo tanks. Concerns with emergency discharge control on certain of these cargo tanks were identified in 1996. RSPA issued the temporary regulation in § 171.5 of the HMR to address these concerns as related to the unloading of liquefied compressed gases because information and data gathered during the rulemaking process indicated that the problems were not limited to specific materials or specific cargo tank configurations.

The Committee focused its discussions, analyses, and recommendations on liquefied petroleum gases (LPG) and anhydrous ammonia. These are the liquefied compressed gases that are most commonly transported in cargo tanks; as a result, LPG and anhydrous ammonia are the materials most frequently involved in unintentional releases during unloading. However, the

Department intends to address safety issues related to unloading of all liquefied compressed gases in a single proposed rule to the extent feasible and practicable. Accordingly, we propose to adopt the Committee's recommendations for all liquefied compressed gases that present risks similar to or more serious than those presented by LPG and anhydrous ammonia. The issues identified by the Committee apply equally to compressed gases with poison inhalation hazards, refrigerant gases, and compressed gases that present risks similar to those of LPG and anhydrous ammonia. The safety benefits that will be realized from this proposed rule justify a broad rulemaking approach.

As one of its first activities, the Committee examined incident reports of unintentional releases of LPG, anhydrous ammonia, and sulfur dioxide during unloading operations. The data included incidents reported to RSPA as required by §§ 171.15 and 171.16 of the HMR and other incidents not required to be reported to RSPA that were identified through reports from DOT field office staff, industry representatives, and newspapers. The Committee identified 70 incidents that occurred from 1990 to 1998 and analyzed them to determine how the current regulations applicable to unloading could be improved.

More than 54 percent of the incidents resulted in unintentional releases from hoses and hose fittings. Another 37 percent involved releases that originated from equipment on the cargo tank motor vehicle itself, including pump seals, swivel joints, pump flanges, and piping and related fittings such as gauges, filters, and flex connectors. Many of these incidents appeared to result from problems with maintenance, installation, or mechanical damage rather than design flaws. Based on this information, the Committee concluded that improved inspection and maintenance programs for delivery hose assemblies and other discharge system components would prevent many incidents and, thus, would improve the safety of cargo tank unloading operations.

However, the Committee also concluded that additional safety enhancements are possible. Thus, the Committee agreed to consider alternative approaches for identifying the occurrence of unintentional releases and reducing their severity by determining which methods or combination of methods provide the most cost-effective means for controlling unintentional releases during cargo tank unloading operations. The Committee heard presentations from manufacturers of a variety of systems designed to shut down cargo tank unloading operations automatically (without the need for human intervention) or by means of off-truck remote shut-off devices.

Based on its discussion and findings, the Committee recommended a program combining measures to prevent unintentional releases during unloading operations with measures that will assure quick identification of releases and effective mitigation. Therefore, we are proposing revisions in these areas:

- Prevention—new inspection, maintenance, and testing requirements for discharge systems, including delivery hose assemblies, on cargo tanks transporting liquefied compressed gases.
- Identification—revised attendance requirements for monitoring unloading operations of LPG and anhydrous ammonia to take account of certain unique operating characteristics while assuring that the person attending the unloading operation can quickly determine if an unintentional release occurs.
- Mitigation—revised requirements for emergency discharge control equipment on certain cargo tanks in liquefied compressed gas service to provide a clearer performance standard for equipment that shuts down unloading operations without human intervention and to provide for an off-truck remote capability for certain cargo tanks to enable a qualified person attending the unloading operation to shut off the flow of product from wherever he may need to be during the delivery. The new requirements vary according to the degree of risk involved with the transportation of specific liquefied compressed gases.

IV. Proposed Revisions

A. Prevention

The Committee recommends and we are proposing the following measures to prevent unintentional releases during unloading of liquefied compressed gases:

- A hose management program, including post-delivery safety checks of hoses and hose assemblies.
- A new inspection and maintenance program for on-truck components of a cargo tank's discharge system.
- A visual check of the discharge system and its components prior to each unloading.

Hose Management Program

The Committee conducted an in-depth analysis of the incident data for liquefied compressed gas spills during unloading. The data indicate that failure of hoses and piping components is the cause of the majority of unloading incidents. In addition, the data show that relatively minor leaks can result in major consequences if a liquefied flammable gas is ignited. For these reasons, the Committee decided that any rule it recommended should contain provisions focused on preventing incidents.

Supporting this position is research conducted by Pennsylvania State University's Transportation Institute (PSUTI) under contract with The Fertilizer Institute. PSUTI analyzed the risks involved in deliveries of anhydrous ammonia and the most cost effective way of mitigating those risks. The PSUTI study identified a hose management program as the most cost-effective method of mitigating risks associated with unloading anhydrous ammonia.

The majority of the incidents examined by the Committee involved leaks from hoses or failures of hose couplings. An incident in Sanford, North Carolina, in September of 1996 provides an example. In that case, the hose couplings of a newly assembled delivery hose assembly disconnected from the hose when subjected to delivery pressures. Less severe hose failures are more frequent and generally occur as a result of cuts and gouges to hoses that have experienced rough handling, such as being dragged across uneven ground or over rough structures during deliveries.

For the reasons outlined above, we are proposing a hose management program for liquid hoses carried on cargo tanks that transport liquefied compressed gases. Although the accident data and analysis focused on unloading operations involving LPG and anhydrous ammonia, the preventive measures we are proposing are equally applicable to unloading operations for all liquefied compressed gases. The proposed program includes tests of new and repaired hose assemblies; safety checks of hoses after each unloading; monthly and annual hose assembly inspections; and specific rejection criteria.

The hose management program would apply to delivery hose assemblies on cargo tank motor vehicles used to transport liquefied compressed gases. For purposes of this rule, a ''delivery hose assembly'' is defined as a liquid delivery hose and its attached couplings. During Committee deliberations, certain Committee members described instances in the field when it is necessary to attach ''adapters'' to the end of a delivery hose assembly to unload product from the

cargo tank into the receiving container. Because these adapters are not regularly attached to the liquid delivery hose and its couplings, they are not considered part of the delivery hose assembly for purposes of the hose management program.

The hose management program would require an operator to remove and replace damaged hose sections and to correct any defects discovered in hoses or hose assemblies. The operator would be required to pressure test a repaired hose at a minimum of 120 percent of the maximum working pressure of the hose before placing it back in service. A pressure test would not be required if the operator corrected defects such as replacing or tightening loose or missing bolts or fastenings on bolted hose assembly couplings provided no slipping of the coupling has occurred.

The annual hose inspection would be conducted by a Registered Inspector as part of the leakage test procedures already required by the HMR, making updating of registration unnecessary. For hoses not permanently attached to the cargo tank motor vehicle, the annual hose test would not necessarily have to be done by the same Registered Inspector or at the same time as the leakage test for the cargo tank motor vehicle.

Discharge System Inspection and Maintenance

Another area of emphasis identified by the Committee with respect to prevention of incidents during unloading was targeted at leaks from piping systems—defined by the Committee to include any component other than the delivery hose assembly that contains product during unloading. Again, the incident data indicate that leaks from piping components during unloading are a cause of a significant proportion of the reported incidents. The Committee heard presentations from two pump manufacturers about how pumps function and how they should be maintained. The Committee also investigated meters and other piping components.

Because of the incident data and the constant wear on piping components, the Committee recommends and we are proposing to institute a program of inspections and tests for piping systems in cargo tanks that transport liquefied compressed gases. The inspection and testing program is similar to the program recommended for hoses. Piping system inspections and tests would include monthly checks of internal self-closing stop valves for closure, testing of linkages designed to close internal self-closing stop valves during emergencies, visual inspections of all piping system components, and rejection criteria for piping system components.

Pre-Delivery Safety Check

As an additional means to prevent unintentional releases from cargo tank delivery hose assemblies and piping, the Committee recommends and we are proposing that the person unloading liquefied compressed gases from a cargo tank visually check those components of the discharge system that are readily observed during the normal course of unloading. This check would be done before each delivery after the pressure in the discharge system reaches equilibrium with the pressure in the cargo tank. This check should assure that all connections are secure and that each component of the discharge system, including delivery hose assemblies and piping, is of sound quality and free of defects detectable through visual observation and audio awareness.

B. Identification

The Committee recommends and we are proposing new attendance provisions applicable to unloading of LPG and anhydrous ammonia. The attendance provisions in § 177.834(i), which we are proposing to revise for clarity and consistency, will apply to all other cargo tank loading and unloading operations. We are proposing the following changes:

- A definition for ''metered delivery service.''
- Revised regulations for monitoring the unloading operations of LPG and anhydrous ammonia in metered delivery service.
- Revised regulations for monitoring the unloading operations of liquefied compressed gases.

Definition for ''Metered Delivery Service''

The Committee recommends that the attendance requirements in the HMR take account of the differences in design and configuration of cargo tank motor vehicles delivering LPG and anhydrous ammonia. Unloading of LPG and anhydrous ammonia from large-capacity cargo tanks through large-diameter delivery hoses involves the transfer of thousands of gallons of product into large storage containers at a rate of 200-400 gallons per minute. Typically, the vehicle is unloaded through a short delivery hose (less than 25 feet). [NOTE: As an aid to the reader, units of measure in this preamble are expressed in U.S. standard or customary units. In the regulatory text, consistent with the requirements of § 171.10 of the HMR, they are expressed using the International System of Units (''SI'' or metric) as the regulatory standard, followed in parentheses by the U.S. standard unit.] Cargo tank motor vehicles that unload LPG or anhydrous ammonia through small-diameter delivery hoses differ in design and operation. These vehicles are used almost exclusively for deliveries in which small volumes of product are transferred to small storage containers at metered flow rates much lower than those used in other unloading operations. The average delivery for these vehicles involves the transfer of fewer than 170 gallons of product at a rate of 40–60 gallons per minute through a delivery hose that commonly ranges from 100 to 150 feet in length.

To account for these differences, we are proposing to define a new term—''metered delivery service.'' The proposed definition for ''metered delivery service'' is an unloading operation conducted at a metered flow rate of 100 gallons per minute or less through an attached delivery hose with a nominal inside diameter of 1.25 inches or less.

Monitoring Unloading Operations for Metered Delivery Service

By far the most common unloading scenario for cargo tank motor vehicles in metered delivery service is the delivery of propane for heating and cooking by households and small businesses, and for light industrial applications. In these settings, the vehicle is typically positioned in the customer's driveway, farm lane, or parking area, and the customer's storage container is located to the side or rear of the facility. The storage container may be located more than 25 feet from the nearest point of vehicle access, and can be up to 150 feet away in extreme cases. Fences, buildings, vegetation, or other obstructions may make it impossible to maintain an unobstructed view of the cargo tank from the position of the storage container.

The delivery hose on a cargo tank motor vehicle in metered delivery service remains attached and full of product during transit. It is equipped with a hose end valve that the attendant opens and closes to start and stop the flow of product into a customer container in the course of each delivery. As a result, an attendant located at the receiving container has a ready means to shut off the flow of gas in the event of a leak at the connection to the receiving container. An attendant located at the vehicle end of the system could respond to such a leak by closing the vehicle's internal self-closing stop valve, but

product in the downstream piping and hose could still continue to escape until the hose empties. Attendance at the position of the receiving container has the advantage of facilitating more effective mitigation of releases at the connection to the receiving container through use of the hose end valve.

Attendance at the receiving container also addresses safety concerns about overfilling. The primary tool used to ensure against overfilling is a fixed maximum liquid level gauge mounted on customer containers. Propane industry safety procedures emphasize the need for close attendance of receiving containers to ensure that this gauge is monitored as necessary to prevent overfilling.

While these considerations favor attendance at receiving containers, attendance at the vehicle end of the unloading system can effectively ensure prompt mitigation of releases from hose assemblies, piping, pump seals, or other components of the unloading system through closure of the internal self-closing stop valve. A requirement for attendance at one end of the unloading system to the exclusion of the other would thus be inappropriate. Therefore, the Committee agreed that the attendant should monitor both ends of the delivery system. Because of concerns about potential cost and other factors, the Committee agreed that using two persons to monitor unloading operations is not a viable option.

The Committee recommends and we are proposing that the qualified person attending the unloading operation remain within 150 feet of the cargo tank and within 25 feet of the delivery hose throughout the unloading operation. In addition, the qualified person must observe the cargo tank, the receiving container, and the delivery hose at least once every five minutes during unloading operations that take more than five minutes to complete. For purposes of this requirement, the qualified person would not be required to be in position to view the entire length of the delivery hose.

This proposed requirement should assure that leaks are detected before a substantial release occurs. Many of the releases that occur during metered delivery operations occur in close proximity to the attendant and are thus detected immediately. In any event, substantial releases would usually be evident to the attendant at any point along the delivery hose, whether or not such releases occur close to the attendant or within the attendant's field of view. Indeed, industry experience has been that substantial leaks during unloading are typically detected first by sound rather than by sight, regardless of the position of the attendant relative to the cargo tank or the source of the leak. Large ruptures and similar mechanical failures are accompanied by loud pops or bangs, followed by the hiss of escaping gas, both of which should be audible at a significant distance in most environments. Even small releases can cause changes in pump sound or vibration, or oscillation in the delivery hose that are detectable by an experienced qualified person located within 25 feet of the delivery hose.

Monitoring Unloading Operations for Other Than Metered Delivery Service

For a cargo tank in other than metered delivery service, as well as for all cargo tanks in LPG and anhydrous ammonia service, a manual emergency discharge control system is located on or within the cargo tank itself. Any releases that occur during unloading are detectable from the position of the cargo tank because of the short delivery hose used; therefore, safety considerations favor attendance from that position. Thus, for unloading of anhydrous ammonia and LPG in other than metered delivery service, and for other liquefied compressed gases in all types of service, we propose that the qualified person attending the unloading operation must be positioned within 25 feet of the cargo tank during unloading. The qualified person must maintain an unobstructed view of the cargo tank and the delivery hose to the maximum extent possible during unloading, except during short periods when it is necessary to activate controls or monitor the receiving tank. For purposes of this ''unobstructed view'' requirement, the qualified person would not be required to be in position to view the entire length of the delivery hose.

Monitoring Unloading Operations for Dual Service Vehicles

Where cargo tank motor vehicles in anhydrous ammonia or LPG service are equipped to unload with both small diameter delivery hoses (1.25 inch nominal inside diameter or less) and larger diameter delivery hoses, the proposed requirements for attending unloading operations for metered delivery service would apply when such vehicles are being used to transfer product at a metered flow rate of 100 gallons per minute or less through the small diameter hose. The attendance requirements applicable to unloading operations for other than metered delivery service would apply at all other times.

Taken together, the Committee believes that the proposed attendance requirements will provide the flexibility necessary to accommodate the need to ensure that both ends of the unloading system can be monitored effectively and, in combination with new inspection and emergency discharge control requirements also being proposed, will provide greater safety benefits on a cost-effective basis.

C. Mitigation

The Committee considered alternatives to the current regulatory requirements for emergency discharge control with a view towards assessing their effectiveness and the need for modifications. The Committee recommends, and we are proposing, the following revisions to the current requirements for equipment designed to minimize the consequences of an unintentional release of a liquefied compressed gas:

- Modification of the performance standard for a passive means to shut down unloading—that is, one that operates without human intervention.
- Modification of the current requirements for emergency discharge control equipment on cargo tanks transporting liquefied compressed gases to account for varying degrees of risk presented by specific materials.
- New requirements for design and certification of emergency discharge control equipment.
- A new requirement that all internal self-closing stop valves on MC 330 and MC 331 cargo tanks and nonspecification cargo tanks authorized by § 173.315(k) with water capacities less than or equal to 3,500 gallons be equipped with a fusible element. Fusible elements are currently required on cargo tanks with capacities greater than 3,500 water gallons.
- A requirement for unloading operating procedures to be maintained on cargo tank motor vehicles.

Modification of the Performance Standard for Passive Means To Shut Down Unloading

A ''passive'' means to shut down unloading when a leak is detected is one that operates automatically, that is, without human intervention. The current regulation at § 178.337–11(a)(1)(i) of the HMR requires that ''each internal self-closing stop valve or excess flow valve must automatically close if any of its attachments are sheared off or if any attached hoses or piping are separated.'' It was reported to the Committee that § 178.337–11(a)(1)(i) has been a source of confusion since it was amended in 1989. This section might be read as requiring an excess flow valve or an internal self-closing

stop valve with an integral excess flow valve or feature to close automatically at any time if any attachments were sheared off or attached hoses or piping were separated regardless of the rate of flow of product through the valve. An excess flow valve is only required to close if its flow rating as established by the original manufacturer is exceeded. The Committee recommends and we are proposing clarifying the current regulations to accurately reflect an excess flow valve's performance capabilities. The clarification appears in proposed § 178.337–8(a)(4)(iv).

None of the unloading incidents examined by the Committee involve complete separations of piping. Indeed, incidents involving piping and other discharge system components on the cargo tank itself usually involve relatively small leaks or releases. Because complete separations of piping during cargo tank unloading operations are unlikely to occur, the Committee concluded that RSPA should modify the current performance standard for passive shut-down. We are therefore proposing that, when required by regulation, a passive means to shut off the flow of product will be defined as one that is designed to shut off the flow of product without the need for human intervention in the event of an unintentional release caused by a complete hose separation.

With respect to shearing off of piping, the requirement for automatic shut-down in the event of a complete pipe separation would be modified to apply only to shearing off of piping directly attached to an excess flow valve or an internal self-closing stop valve with an integral excess flow valve or feature. The proposed modification would require the valve to close automatically when any piping mounted directly on the valve is sheared off at a point before the first valve, pump, or fitting downstream from the excess flow valve or feature if the flow of product reaches the rated flow of gas or liquid specified by the original valve manufacturer. The current requirement for installation of additional downstream excess flow valves if branching or other restrictions reduce the flow rating to less than that of the excess flow valve at the cargo tank has been eliminated.

Modification of Requirements for Emergency Discharge Control Equipment

The Committee considered two types of emergency discharge control equipment: (1) passive means to shut down unloading, and (2) off-truck remote shut-off equipment that can be activated by a person attending an unloading operation at a distance from the cargo tank. The Committee also discussed different cargo tank motor vehicle configurations and capacities with a view towards determining the most appropriate equipment for each configuration and operating situation.

a. *Passive shut-down*. For cargo tanks transporting LPG and anhydrous ammonia in other than metered delivery service, the Committee agreed that a requirement for a means to shut off the flow of product without human intervention in the event of a complete liquid hose separation is justified because of higher flow rates during unloading and the relatively low projected cost of technology currently being developed. The Committee therefore recommends that each MC 330 and MC 331 cargo tank intended for transportation of LPG or anhydrous ammonia in other than metered delivery service must be equipped with a passive means to shut down unloading that is designed to shut off the flow of product in the event of unintentional releases resulting from complete liquid hose separations only.

The Committee discussed at length the timeframe within which the passive means should operate. The Committee agreed that the regulation should require shut down of unloading within a specified timeframe. Most of the technology currently being developed is designed to shut off the flow of product within 10 seconds. However, the Committee was concerned that none of this technology has been operationally tested with liquefied compressed gases. The Committee was also concerned that the characteristics of specific materials could make it difficult to shut down unloading immediately. For this reason, the Committee recommends that a passive means to shut off the flow of product must operate without human intervention within 20 seconds of an unintentional release caused by a complete liquid hose separation. We encourage the industry to develop technology that operates effectively and reliably in a shorter amount of time. Faster shut-down means that serious consequences resulting from unintentional releases are less likely.

We believe that the safety benefits of a passive means to shut down unloading justify its use on cargo tanks that transport Division 2.3 materials—gases that are poisonous by inhalation. An unintentional release of a Division 2.3 material can have devastating consequences if it is not controlled quickly. In addition, we believe that materials transported in other than metered delivery service that present the same hazards as LPG and anhydrous ammonia should be transported in cargo tanks with a passive shut-down capability. The concerns about high flow rates during unloading apply equally to these materials as to LPG and anhydrous ammonia. Thus, we propose to adopt the Committee's recommendation for passive shut-down to require that all shipments of gas poisonous by inhalation (Division 2.3 materials), and shipments in other than metered delivery service of non-flammable compressed gas (Division 2.2 materials) with a subsidiary hazard, flammable gas (Division 2.1 materials), and anhydrous ammonia must be transported in cargo tanks equipped with a means to shut off the flow of product without human intervention within 20 seconds of an unintentional release caused by a complete liquid hose separation.

In many instances, the equipment utilized to meet the proposed requirement for passive shut-down may be contained in the delivery hose assembly. The Committee heard from at least two vendors that have developed passive shut-down technology based on specially equipped delivery hose assemblies.

We are aware that a number of owners or operators of facilities receiving liquefied compressed gases from cargo tank motor vehicles require, as a condition of unloading, that the cargo tank operator utilize the facility's hose assembly for the unloading operation. In most cases, such facility hoses are subject to standards of the Occupational Safety and Health Administration (OSHA) of the Department of Labor and/or state requirements that are consistent with the recommendations of the National Fire Protection Association (NFPA).

For those situations where a facility requires the use of its own hose assembly for unloading and the cargo tank operator relies on a specially fitted delivery hose to comply with the requirement for passive emergency shut-down, the Committee recommends and we are proposing to permit unloading provided two conditions are met. First, the qualified person monitoring the unloading operation must remain within arm's reach of the mechanical means of closure for the internal self-closing stop valve throughout the unloading operation except for short periods when it is necessary to activate controls or monitor the receiving container. Second, the qualified person monitoring the unloading operation must visually examine the facility hose for obvious defects prior to beginning unloading.

b. *Off-truck remote shut-offs.* For cargo tanks transporting LPG and anhydrous ammonia in metered delivery service, the Committee agreed that a passive shut-down capability is not justified in terms of costs versus benefits. These cargo tanks deliver LPG or anhydrous ammonia through small diameter hoses at low flow rates. Delivery times commonly average 3–5 minutes. The discharge rate serves as a limiting factor on risk—over a period of seconds or even minutes, the average amount of product released in an incident will be relatively small.

At the same time, however, the Committee agreed that the qualified person attending the unloading of a cargo tank in metered delivery service must be able to quickly mitigate an unintentional release to prevent significant consequences. Thus, the Committee recommends that a cargo tank motor vehicle in metered delivery service for LPG or anhydrous ammonia must be equipped with an off-truck remote means to close the internal self-closing stop valve and shut off all motive and auxiliary power equipment when activated by a qualified person attending the unloading of the cargo tank motor vehicle. The off-truck remote must be capable of activation from any place the qualified person may need to be during the unloading operation. The activation device must not be capable of reopening the internal self-closing stop valve once it has been closed in an emergency; this is to assure that an operator cannot unintentionally restart the flow of product with the off-truck remote during an emergency.

The Committee recognizes that even reliable, well-designed wireless transmitter/receiver systems cannot be expected to function in every circumstance. In a small percentage of cases, signal interference may require the attendant to change position before such a system will function. In a very small number of cases, unusual site conditions may make it impossible to operate such a system at all. The latter could occur where signal interference is particularly severe (e.g., at a radio tower) or where the use of a wireless transmitter is prohibited (e.g., at a construction site where blasting operations are being conducted). Under the proposed rule, such limitations would be considered acceptable. The Committee recognizes that some deliveries will be made under conditions where an otherwise operable wireless transmitter/receiver system cannot be used or might not function and believes that the other safety features of this proposed rule should be considered sufficient in such cases. Accordingly, the proposed rule would not prohibit deliveries in such circumstances.

The Committee did not want to limit operators of cargo tanks to a single type of off-truck remote shut-off technology. While most include radio frequency devices, the Committee is aware of at least one off-truck remote shut-off device that is located at the end of a specially configured delivery hose. This technology increases the abrasion-resistance of a hose, thereby reducing the potential for hose failures, and has the added feature of shutting down the flow of product without human intervention in the event of either a delivery hose leak or a complete separation of the delivery hose. Where the proposed regulation includes a requirement for the qualified person to carry the off-truck remote activation device at all times during the unloading process, there is an exception for a system that places the remote shut-down device at the end of the delivery hose and that also includes an automatic shut-down feature that reacts to both hose leaks and complete hose separations.

There are several important safety benefits associated with an off-truck remote shut-off capability. In the event of an unintentional release, the qualified person will be able to quickly close the internal self-closing stop valve, thereby minimizing the amount of product released. The qualified person will also be able to quickly shut off the vehicle's engine and thus eliminate a possible ignition source. Further, the qualified person will not be placed in harm's way by having to approach the vehicle during an incident when it may be enveloped in vapors of released product or engulfed in flames if there is a fire at the point of release. These safety benefits are so significant that we are adopting the Committee's recommendation to require that each cargo tank in metered delivery service transporting a non-flammable compressed gas (Division 2.2 material) with a subsidiary hazard, a flammable gas (Division 2.1 material), or anhydrous ammonia have an off-truck remote shut-off capability designed in accordance with the Committee's recommendation.

c. *Cargo tank size and emergency discharge control.* The size of cargo tanks that transport LPG or anhydrous ammonia in metered delivery service varies. Most have a water capacity of 3,500 gallons or less. However, we know of between 150 and 170 cargo tanks transporting LPG and anhydrous ammonia in metered delivery service with capacities greater than 3,500 gallons. The Committee discussed whether larger capacity vehicles in metered delivery service present increased risks to life, health, property, or the environment. RSPA believes that the capacity of a cargo tank could have a significant effect on the worst-case consequences of an incident, particularly where the qualified person's view of the vehicle is obstructed or obscured. To address RSPA's concerns, the Committee agreed that cargo tanks with capacities greater than 3,500 water gallons transporting LPG and anhydrous ammonia in metered delivery service must, for obstructed view deliveries, in addition to an off-truck remote shut-off capability, have either: (1) a passive shut-down capability to shut off the flow of product without human intervention within 20 seconds of an unintentional release caused by a complete hose separation, or (2) a means to automatically shut off the flow of product unless prompted at least once every five minutes during the unloading operation by the person attending the unloading operation (e.g., an off-truck remote shut-off capability with a query feature). These types of emergency discharge control will assure that the unloading operation will shut down even if the qualified person is incapacitated.

Here again, we believe that the safety issues apply equally to certain cargo tanks transporting other liquefied compressed gases in metered delivery service with hazards similar to LPG and anhydrous ammonia. Thus, we are proposing that the Committee's recommendation be adopted for all non-flammable compressed gases (Division 2.2 materials) with a subsidiary hazard, flammable gases (Division 2.1 materials), and anhydrous ammonia in metered delivery service in cargo tanks with capacities greater than 3,500 water gallons.

The following table summarizes our proposal for emergency discharge control equipment on cargo tanks transporting liquefied compressed gases:

Material	Cargo tank capacity	Delivery service	New required emergency discharge control equipment
1. Division 2.2 materials with no subsidiary hazard, excluding anhydrous ammonia.	All	All	None.
2. Division 2.3 materials	All	All	Passive shut-down capability.
3. a. Division 2.2 materials with a subsidiary hazard and anhydrous ammonia. b. Division 2.1 materials.	All	Other than metered delivery service.	Passive shut-down capability.
4. a. Division 2.2 materials with a subsidiary hazard and anhydrous ammonia. b. Division 2.1 materials.	3,500 water gallons or less.	Metered delivery service.	Off-truck remote shut-down capability.
5. a. Division 2.2 materials with a subsidiary hazard and anhydrous ammonia.	Greater than 3,500 water gallons.	Metered delivery service.	Off-truck remote shut-down capability and
b. Division 2.1 materials in cargo tanks.			For obstructed view deliveries where permitted by the regulations, an off-truck remote with a query feature OR passive shut-down capability.

We believe that passive shut-down and off-truck remote technology provides such important safety benefits that all cargo tanks transporting liquefied compressed gases except for Division 2.2 materials with no subsidiary hazard (excluding anhydrous ammonia) should be equipped with one or the other, depending on the type of service in which they operate. The risks presented by Division 2.2 materials with no subsidiary hazard are not sufficient to justify either a passive shut-down capability or an off-truck remote shut-off capability. Accordingly, we are proposing that MC 330 and MC 331 specification cargo tank motor vehicles and nonspecification cargo tank motor vehicles authorized under § 173.315(k) of the HMR currently in operation should be equipped in accordance with the above table. The timing of the retrofit is discussed in detail under ''Implementation Schedule'' below.

Design and Certification of Emergency Discharge Control Equipment

We are also proposing specific requirements for certifying the design and installation of emergency discharge control equipment. For off-truck remote shut-off equipment, our proposal would require that it be installed under the supervision of a Registered Inspector, who would certify that it was installed according to the manufacturer's specifications. For passive shut-down equipment, we propose that its design must be certified by a Design Certifying Engineer and its installation must be supervised by a Registered Inspector. Separate certification of emergency discharge control equipment will allow a manufacturer of an MC 331 cargo tank to build and certify a cargo tank without installing an emergency discharge control system. The Committee was concerned that the requirement for emergency discharge control is dependent on the type of service in which the tank is operated, and that the manufacturer cannot be expected to know how it will be operated at the time of manufacture. The Committee was also concerned that cargo tank manufacturers may not have the specialized expertise necessary to install and certify the performance of the emergency discharge control technology currently being developed.

Some operators of cargo tank motor vehicles currently in operation believe that their passive shut-down systems meet the performance requirements contained in this proposed regulation. The Committee believes that operators should assure that any such systems comply with the new performance standard. Accordingly, the Committee recommends and we are proposing that any passive shut-down systems installed on cargo tank motor vehicles prior to implementation of the proposed regulation must be certified by a Design Certifying Engineer.

The manufacturers of internal self-closing stop valves with an integral excess flow valve or feature participating as members of the Committee advised the Committee that, in addition to restrictions in downstream piping caused by pumps, other variables may make such a valve unsuitable to serve as a means of passive shut-down. Such variables include other restrictions incorporated in the discharge system (due to pipe and hose dimensions, branching, elbows, reductions in pipe diameter, or other in-line valves or fittings), low operating pressures as a result of ambient temperatures, or a partially closed valve downstream from the excess flow valve, all of which restrict the rate of flow through the excess flow valve. In addition, they noted that operating conditions will also produce different flow rates affecting activation of the valve for different liquefied compressed gases because the properties vary from one gas to another. They advised the Committee that such variables may prevent activation of the excess flow valve in the event of a complete hose separation.

Fusible Elements

The Committee also discussed the safety benefits of fusible elements, which provide a heat-activated means for closing a valve. Fusible elements melt when subjected to sufficiently high temperatures, thereby effecting closure of the valve to which they are affixed. The HMR currently require installation of on-truck remote closures with a means of thermal activation on MC–331 cargo tanks with capacities greater than 3,500 gallons. The Committee agreed and we are proposing that internal self-closing stop valves be equipped with a means of thermal activation on all MC 330, MC 331, and nonspecification cargo tanks authorized under § 173.315(k) that are not currently so equipped.

Operating Procedures

We are proposing that operators of cargo tank motor vehicles in liquefied compressed gas service carry operating procedures applicable to unloading operations on or within the cargo tank motor vehicle. The operating procedures should include all information relevant to the vehicle's emergency discharge control equipment, including the type installed on the vehicle and, for passive systems, the parameters within which it is designed to operate. This will help to assure that a qualified person attending a cargo tank unloading operation is familiar with and understands the features of the cargo tank motor vehicle's emergency discharge control equipment and how it operates.

D. Implementation Schedule

The Committee discussed implementation issues in detail and

agreed on the following implementation schedule outline in the following table for the new requirements proposed in this NPRM. [The dates noted assume that the final rule will be effective on July 1, 1999.]

Section	Compliance date
1. New emergency discharge control equipment	
a. § 173.315(k)(6)—Authority for nonspecification cargo tank motor vehicles to cross state lines to travel to and from qualified assembly, repair, or requalification facility.	July 1, 1999.
b. § 173.315(n)(2)—For cargo tanks in other than metered delivery service and for cargo tanks transporting Division 2.3 materials, a means to automatically shut off the flow of product without the need for human intervention within 20 seconds of an unintentional release caused by complete hose separation.	July 1, 2001, for newly manufactured cargo tanks. Beginning July 1, 2001, cargo tanks currently in service begin retrofit at pressure testing interval.
c. § 173.315(n)(3)—For cargo tanks in metered delivery service with capacity of 3,500 water gallons or less, a means to enable the operator to stop the delivery from any location he may need to be during unloading.	July 1, 2001, for newly manufactured cargo tanks. Beginning July 1, 2001, cargo tanks currently in service begin retrofit at pressure testing interval.
d. § 173.315(n)(3) and (4), § 177.840(p)(2)(ii)—For cargo tanks in metered delivery service with capacity greater than 3,500 water gallons, a means to enable the operator to stop the delivery from any location he may need to be during unloading AND for obstructed view deliveries either a passive shut-down capability OR a means to shut down the unloading operation unless prompted by the operator at least once every five minutes.	July 1, 2001, for newly manufactured cargo tanks. Beginning July 1, 2001, cargo tanks currently in service begin retrofit at pressure testing interval or before July 1, 2003, whichever is earlier.
e. § 173.315(p), § 178.337–8(a)(4)—fusible elements on cargo tanks with capacities less than or equal to 3,500 water gallons.	July 1, 1999, for newly manufactured cargo tanks. Beginning July 1, 1999, cargo tanks currently in service begin retrofit at leakage test interval.
2. Unloading procedures	
a. § 177.840(l)—written operating procedures for unloading operations	January 1, 2000.
b. § 177.840(m)—pre-transfer check of discharge system	July 1, 1999.
c. § 177.840(n)—shut down of unloading in the event of an emergency	July 1, 1999.
d. § 177.840(o)—daily test of activation device for cargo tank motor vehicles equipped with off-truck remote shut-off systems.	July 1, 1999.
e. § 177.840(p)—unloading procedures and attendance requirements for LPG and anhydrous ammonia in metered delivery service.	July 1, 1999.
f. § 177.840(q)—unloading procedures and attendance requirements for LPG and anhydrous ammonia in other than metered delivery service.	July 1, 1999.
3. Discharge system inspection and maintenance program for cargo tanks transporting liquefied compressed gases.	
a. § 180.407(h)—annual inspection of discharge system by Registered Inspector	The first leakage test after July 1, 2000.
b. § 180.416(b)—hose assembly marking	July 1, 2000.
c. § 180.416(c)—post-delivery hose check	July 1, 1999.
d. § 180.416(d)—monthly discharge system inspections and tests	July 1, 1999.
e. § 180.416(f)—pressure tests for new/repaired hose assemblies	July 1, 1999.
f. § 180.416(g)—discharge system rejection criteria	July 1, 1999.
g. § 180.407(h)(4); § 180.416(d)(5), (f)(3)—recordkeeping for inspections and tests	July 1, 2000.

Voluntary compliance would be authorized within 30 days of publication of the final rule in the **Federal Register**, providing parties and the agency time to file and respond to any petitions for reconsideration. New or amended sections not specifically referenced in the table would become effective on July 1, 1999.

The Committee agreed that the new discharge system inspection and maintenance requirements and the revised attendance provisions applicable to unloading of LPG and anhydrous ammonia should become effective [effective date of final rule]. However, the Committee believes that the final rule should allow time for development and testing of new technologies to meet the requirements for passive and off-truck remote shut-off capability. The Committee recommends

and we are proposing a two-year period for this purpose.

The Committee is not aware of any passive shut-off technology currently installed and functioning on vehicles in liquefied compressed gas service that is sufficiently tested and proven to meet the proposed new standards. Although several types have been developed and tested on a limited basis, none has been subjected to widespread testing under all operating conditions. Allowing a two-year development period will give industry sufficient time to install prototype designs on cargo tanks, operate the tanks for a year while conducting testing, make refinements to the technology as necessary, and operate the tanks for another year to test the refinements. In-use testing under actual winter-delivery conditions—including exposure to road salt, ice, damp weather conditions, and geographical variations—is essential. Testing the technology over more than one year should result in better, more reliable systems.

The argument above for development of passive shut-off technology over two years to ensure reliable functioning in all conditions is also applicable to off-truck remote shut-off technology. Industry has been installing and testing a number of different radio-frequency devices. Testing has shown that some of these devices were inadequate. Further, some in the industry have discovered that installation of these devices can affect other cargo tank systems, resulting in unwanted or even unsafe conditions while the vehicle is in operation. The importance of a trial-and-development period is underscored by the experience of companies that have installed off-truck remote shut-off systems. Some of these have had to be discarded because of problems with reliability, range, transmission/receiving antennas, and battery life; maintenance difficulties; and inability to operate through obstructions.

Another factor arguing in favor of a two-year development period is that the industry needs time to develop standards for installing off-truck remote shut-off equipment on cargo tank motor vehicles. There are a variety of different make and model vehicles with differing ignition, computer, and electrical systems—all of which can affect installation of an off-truck remote shut-off device. The actual installation can take from half-a-day to two days depending on the installer's familiarity with the type of vehicle. A two-year development period will provide industry time to develop installation procedures for all different types of vehicles.

The Committee also recommends that operators be permitted to retrofit vehicles with the new safety equipment over a five-year period on a schedule consistent with a cargo tank's five-year pressure retest cycle. This schedule saves the industry the cost of taking a vehicle out of service more than once during the five-year period, avoids conflicts with the peak periods of use for cargo tanks in LPG and anhydrous ammonia service, and provides a standard for implementation of this rule that can be checked easily during roadside inspections. No MC 330, MC 331, or nonspecification cargo tank used to transport liquefied compressed gases would be permitted to operate after its first pressure testing interval occurring after [two years after the effective date of the final rule] unless it is equipped with appropriate emergency discharge control equipment. All equipment retrofits would be completed by [seven years after the effective date of the final rule].

Given the rates at which cargo tank motor vehicles are rechassised and requalified, the Committee estimates that over half of all cargo tank motor vehicles subject to the proposed retrofit requirements will be equipped within the first two years after the two-year development period. About 90 percent of affected vehicles will be equipped by the end of the fourth year.

The Committee also recommends and we are proposing that cargo tanks authorized under § 173.315(k) of the HMR, which are currently limited to intrastate operations, should be permitted to cross state lines for the purpose of traveling to and from a qualified assembly, repair, maintenance, or requalification facility. The cargo tank need not be cleaned and purged, but it may not contain liquefied petroleum gas in excess of five percent of the water capacity of the cargo tank. Vehicles supplied with engine fuel from the cargo tank would be permitted to carry sufficient fuel for the trip to or from the facility.

The Committee took note of the fact that, beginning in the spring of 1997, several operators of cargo tanks transporting liquefied compressed gases installed off-truck remote shut-off devices in efforts to address RSPA's concern over emergency discharge control. The Committee agreed that companies that installed off-truck remote shut-offs designed to close the internal self-closing stop valve from a distance of at least 150 feet should not be required to retrofit their vehicles to meet the requirements for off-truck remote shut-off devices being proposed here. Thus, the Committee recommends and we are proposing that cargo tank motor vehicles in metered delivery service, with capacities less than or equal to 3,500 gallons, that are equipped with off-truck remote shut-offs that close the internal self-closing stop valve will not be subject to the retrofit requirements if the systems were installed prior to [one year after effective date of final rule]. When a system reaches the end of its useful life, a replacement system would be required to conform to the new requirements proposed in this NPRM.

Because of RSPA's concern about the potential risk involved with larger capacity cargo tanks, the Committee agreed and we are proposing that cargo tank motor vehicles in metered delivery service with capacities greater than 3,500 water gallons must have an off-truck remote shut-off capability to shut the internal self-closing stop valve or other primary means of closure and shut down all motive and auxiliary power by [four years after effective date of final rule], whether or not they are due to be requalified at that time and whether or not they are already equipped with off-truck remote shut-off devices that close the internal self-closing stop valve. When such vehicles are used to make deliveries where the qualified person monitoring the unloading operation cannot maintain an unobstructed view of the cargo tank, the vehicles must have either a passive shut-down capability or a query feature as proposed above by [four years after effective date of final rule].

We anticipate that periodic progress reviews will be needed during the two-year development and testing cycle for emergency discharge control technology. These reviews would help foster communication between industry and government and function as a catalyst for critical development and testing needs that may occur.

We plan to work in partnership with the industry to assure widespread dissemination of information on the development and testing of emergency discharge control technology. We envision that this effort will parallel training and research conducted by organizations such as the Propane Education and Research Council, the National Propane Gas Association, the Fertilizer Institute, and the Compressed Gas Association. Key elements of the progress review and study may include: (1) surveying and cataloging industry efforts; (2) identification and communication of successes and problems; (3) monitoring or performing critical research and development; and (4) testing. We will also explore possible sponsorship of technology exchange

forums to highlight the state of technology development and implementation.

E. Miscellaneous

In addition to the proposals outlined above, we are proposing revisions to the current specification for MC 331 cargo tanks to accommodate new requirements for hose assembly testing, emergency discharge control, excess flow valves, and thermal means of closing an internal self-closing stop valve. Several members of the Committee also suggested that the MC 331 cargo tank specification should be clarified and simplified. This is particularly important with the introduction of new terminology and the need to differentiate types of discharge control. To accomplish this, the Committee agreed to revisions to the current specification, described in more detail in the section-by-section review below, that would add several defining terms and place all requirements for outlets, inlets, and openings in a single section.

F. Section-by-Section Review

Part 171

Section 171.5. The provisions initially adopted as a temporary measure would be removed. Through the amendments proposed in this notice, these temporary measures would no longer be necessary.

Section 171.7. We propose to revise the incorporations by reference to reflect the most recent publication of The Chlorine Institute.

Section 171.8. We propose to add a new definition for ''metered delivery service.''

Part 173

Section 173.315. Paragraph (k) sets forth requirements that must be met for use of nonspecification cargo tanks to transport LPG. Paragraph (k)(4) currently requires that such cargo tanks conform to the requirements of Pamphlet 58 of the National Fire Protection Association. We are proposing to include an exception from this requirement where the provisions of Pamphlet 58 are inconsistent with Parts 178 and 180 of the HMR. We also propose to permit such tanks to cross state lines to travel to and from a qualified assembly, repair, maintenance, or requalification facility under certain conditions. Finally, we propose to rewrite paragraph (k) for clarity.

We are proposing to revise paragraph (n) to add requirements for emergency discharge control equipment on cargo tanks transporting liquefied compressed gases. We concluded that the emergency discharge control equipment design and certification requirements should not be included with the MC 331 cargo tank specification in Part 178 of the HMR. The new requirements are material-specific depending on the degree of risk associated with specific classes of liquefied compressed gases. The MC 331 cargo tank specification in Part 178 sets forth requirements for all MC 331 cargo tanks that apply irrespective of the specific material transported in the tank. For these reasons, we have placed the new emergency discharge control requirements in Part 173, which sets forth general requirements for shipments and packagings.

Proposed paragraph (n)(1) includes a table that shows the subparagraphs of proposed paragraph (n) where emergency discharge control requirements applicable to specific liquefied compressed gases are located.

Proposed paragraph (n)(2) describes the emergency discharge control equipment that will be required on cargo tanks used to transport liquefied compressed gases in other than metered delivery service and requirements for installation and certification. Proposed paragraph (n)(2)(ii) would require the design for equipment to be certified by a Design Certifying Engineer. The certification would be required to consider any specifications of the original component manufacturer and would explain how the passive means to shut off the flow of product operates. This certification is separate from the certification required for an MC 331 cargo tank motor vehicle under § 178.337–18. Proposed paragraph (n)(2)(iii) would require installation under the supervision of a Registered Inspector except for equipment, such as a delivery hose assembly, that is installed and removed as part of regular operations.

Proposed paragraphs (n)(3) and (n)(4) describe the emergency discharge control equipment that would be required on cargo tanks transporting liquefied compressed gases in metered delivery service, including requirements for installation and certification. Proposed paragraph (n)(5) shows the dates by which cargo tanks used for transporting liquefied compressed gases must come into compliance with the new emergency discharge control equipment requirements.

We are also proposing to add paragraph (p) to require each specification MC 330, MC 331, and nonspecification cargo tank authorized under § 173.315(k) to conform to the new requirements for fusible elements.

Part 177

Section 177.834. We propose to revise paragraph (i)(3), which currently covers attendance requirements for loading and unloading of all cargo tank motor vehicles, to reference the new provisions in § 177.840 that set forth attendance procedures specifically applicable to unloading of LPG and anhydrous ammonia. In addition, we are revising this paragraph to clarify that the person monitoring the unloading operation must be alert and have an unobstructed view of the cargo tank and the delivery hose to the maximum extent practicable. We propose to remove paragraph (i)(5) for clarity.

Section 177.840. We propose to add several new provisions concerning unloading procedures for liquefied compressed gases. Paragraph (l) would require that each operator of a cargo tank motor vehicle transporting a liquefied compressed gas carry a written operating procedure for all delivery operations on the cargo tank motor vehicle. The operating procedure would describe the vehicle's emergency discharge control features and, for passive systems, set forth the parameters within which they are designed to function. If the cargo tank motor vehicle relies on a specially equipped delivery hose to meet the requirements of § 173.315(n)(2), the procedure would describe the conditions under which use of a facility-provided hose for unloading is authorized.

We propose to add paragraph (m) to require that, before each transfer from a cargo tank motor vehicle containing a liquefied compressed gas, the qualified person unloading the cargo tank must check those components of the discharge system that are readily observed during the normal course of unloading after the pressure in the discharge system has reached at least equilibrium with the pressure in the cargo tank. The qualified person would determine that each component is of sound quality and without obvious defects detectable through visual observation and audio awareness. The qualified person would also assure that all connections are secure. This paragraph would also prohibit an operator from unloading a liquefied compressed gas if the discharge system has any of the defects listed in proposed § 180.416(g).

Paragraph (n) would require the qualified person to promptly shut the internal self-closing stop valve or other primary means of closure and shut down all motive and auxiliary power equipment in the event of an unintentional release during unloading.

Paragraph (o) would require that operators of cargo tank motor vehicles with an off-truck remote shut-off capability successfully test the activation device within 18 hours prior to the first delivery of each day. The person conducting the test must be at least 150 feet from the cargo tank and may have the cargo tank in his line of sight. A test at this distance should help to assure that the activation device will function at the maximum distance permitted for a qualified person attending an unloading operation.

Paragraphs (p) and (q) provide proposed attendance requirements for unloading LPG and anhydrous ammonia. For cargo tank motor vehicles in metered delivery service, paragraph (p) would require that a qualified person must remain within 150 feet of the cargo tank motor vehicle and within 25 feet of the delivery hose and must observe both the cargo tank and the receiving container at least once every five minutes while the internal self-closing stop valve is open. Proposed paragraph (p)(2) sets forth attendance requirements for unloading LPG and anhydrous ammonia from cargo tank motor vehicles with capacities greater than 3,500 gallons.

Paragraph (q) proposes revised attendance requirements for cargo tank motor vehicles unloading LPG or anhydrous ammonia in other than metered delivery service. For these vehicles, the qualified person must remain within 25 feet of the cargo tank throughout the unloading operation and must maintain an unobstructed view of the cargo tank except when activating controls or monitoring the receiving container for brief periods.

Paragraph (r) proposes conditions under which cargo tanks equipped with emergency discharge control equipment that is part of the delivery hose may be unloaded using facility-provided hoses.

Proposed paragraph (s) would require that, for a cargo tank with an off-truck remote shut-off, the qualified person must be in possession of the activation device at all times during the unloading operation. This paragraph includes an exception from this requirement if the activation device is part of a system that will shut off the unloading operation without human intervention in the event of a leak or separation of the delivery hose.

Proposed paragraph (t) would require that, until a cargo tank motor vehicle unloading liquefied compressed gases in other than metered delivery service is equipped with a passive means to shut down unloading, the qualified person attending the unloading operation must remain within arm's reach of a means to shut down the unloading operation except for short periods to activate controls or monitor the receiving container.

Proposed paragraph (u) would require that chlorine be unloaded from cargo tanks in accordance with procedures set forth in section 3 of Pamphlet 57 published by the Chlorine Institute. This proposal responds to comments received under Docket HM–225.

Part 178

Section 178.337–1. We are proposing to add a new paragraph (g) that would define ''emergency discharge control,'' ''excess flow valve, integral excess flow valve or excess flow feature,'' ''internal self-closing stop valve,'' and ''primary discharge control system.''

Section 178.337–8. We are proposing to retitle and rewrite this section to place all of the requirements related to MC 331 cargo tank openings, inlets, and outlets in one section. Paragraph (a)(1) would be rewritten for clarity. Paragraph (a)(2) would be revised to indicate the specific cargo tank openings that must be closed with a plug, cap, or bolted flange.

Paragraph (a)(3) would be added to describe requirements for product inlet openings, including vapor return lines, and to move applicable requirements concerning installation and materials of construction from §§ 178.337–11(a)(1)(ii) and 178.337–11(a)(1)(iii).

Paragraph (a)(4) would be added to describe requirements for liquid and vapor discharge outlets. This paragraph also specifies performance requirements for thermal remote actuators and for linkages between closures and remote actuators currently in § 178.337–11(a)(2). All cargo tanks, except for those used to transport chlorine, carbon dioxide, refrigerated liquid, and certain cargo tanks certified before January 1, 1995, would be required to have a primary discharge control system consisting of an internal self-closing stop valve with an on-truck remote means of closure that operates by both manual and thermal means. This paragraph would thus implement the Committee's recommendation that all MC 331 cargo tanks, regardless of their capacities, must be equipped with fusible elements.

Proposed paragraph (a)(4)(i) would incorporate requirements for remote closures on cargo tanks greater than 3,500 gallons water capacity. These requirements are currently in § 178.337–11(a)(2)(i). Paragraph (a)(4)(ii) would incorporate requirements currently in § 178.337–11(a)(2)(ii) for remote closures on cargo tanks with water capacities of 3,500 gallons water capacity or less. This paragraph includes a new requirement for a remote means of closure that operates by thermal means. Proposed paragraph (a)(4)(iii) would move applicable requirements concerning installation and materials of construction for internal self-closing stop valves from §§ 178.337–11(a)(1)(ii) and (a)(1)(iii). Proposed paragraph (a)(4)(iv) would clarify performance requirements for excess flow valves, integral excess flow valves, and excess flow features. Proposed paragraph (a)(4)(v) would permit an integral excess flow valve or the excess flow feature of an internal self-closing stop valve to be designed with a bypass and would specify bypass requirements currently found in § 178.337–11(a)(1)(vi). Proposed paragraph (a)(4)(vi) would specify construction requirements for internal self-closing stop valves currently located in § 178.337–11(a)(1)(ii).

Proposed paragraph (a)(5) would move exceptions from the requirement for a primary discharge control system from § 178.337–11(a)(2) and (c). Proposed paragraph (a)(6) would move requirements for shut-off valves from § 178.337–11(b). Proposed paragraph (a)(7) would permit an excess flow valve to be designed with a bypass for equalization of pressure.

Proposed paragraph (b) moves and updates requirements applicable to chlorine cargo tanks from § 178.337–11(a)(4). Proposed paragraph (c) moves and restates the current exception from the requirement for an internal self-closing stop valve for cargo tanks that transport carbon dioxide, refrigerated liquid, currently in § 178.337–11(a)(3).

Section 178.337–9. We propose to revise paragraph (b)(6) to move the hose testing requirements to a new paragraph (b)(7), which would require that hose assemblers mark each hose assembly with a unique identifier and test the hose assembly in accordance with the new testing requirements proposed in § 180.416(f). Current paragraph (b)(7) would be redesignated as (b)(8) and updated to incorporate the most recent publications of The Chlorine Institute. This proposal responds to comments received to Docket HM–225. In addition, we are modifying paragraph (c) of this section to allow for a product inlet to be marked as ''spray-fill'' or ''vapor.'' This is a common industry practice that addresses safety concerns about ensuring that loading and unloading lines are correctly connected. The proposed revision should clarify any confusion among enforcement personnel about whether this practice is permitted.

Section 178.337–11. We are proposing a new paragraph (a) to require that liquid discharge lines in MC 331 cargo tanks must be fitted with emergency discharge control equipment as specified by product and service in § 173.315(n). This paragraph would also note that performance and certification requirements for emergency discharge control equipment are specified in § 173.315(n) and are not considered to be part of the MC 331 cargo tank motor vehicle certification. In addition, we propose to redesignate paragraph (a) as paragraph (b) and modify redesignated paragraph (b)(1)(v) to accurately reflect the performance capabilities of excess flow valves.

Proposed paragraph (b) restates the exception from emergency discharge control requirements in current paragraph (c)(3) of this section.

Current paragraphs (a)(1)(ii), (iii), (iv), and (vi) would be relocated to § 178.337–8. Current paragraph (a)(1)(v) would be removed. Current paragraphs (a)(2), (a)(2)(i) and (ii), (a)(3), and (a)(4) and current paragraph (b) would be moved to § 178.337–8.

Part 180

Section 180.403. We propose to add a definition for ''delivery hose assembly'' and for ''piping systems.'' In addition, we propose to revise the current definition for ''modification'' to specify that a change in the design of the passive shut-down capability of the emergency discharge control equipment would be considered a modification. This would make a modification of this equipment subject to certification by a Design Certifying Engineer under § 180.413(d).

Section 180.405. We propose to revise this section to incorporate the retrofit requirements for MC 330, MC 331, and nonspecification cargo tank motor vehicles authorized under § 173.315(k). For both passive shut-down and off-truck remote equipment, a cargo tank motor vehicle must be retrofitted by the date of its first scheduled pressure test two years after the effective date of the final rule. For a cargo tank of greater than 3,500 gallons capacity operating in metered delivery service, we propose to allow two years to accomplish the required retrofit; thus, retrofits must be completed no later than four years after the effective date of the final rule or by the cargo tank's first scheduled pressure test two years after the effective date of the final rule, whichever is earlier. For fusible elements, a cargo tank must be retrofitted by the date of its first scheduled leakage test after the effective date of the final rule.

Section 180.407. We are proposing to revise paragraph (h) of this section to authorize a ''meter creep'' test for checking the leak tightness of an internal self-closing stop valve and to add a requirement that delivery hose assemblies and piping systems of MC 330, MC 331, and nonspecification cargo tanks authorized under § 173.315(k) must be visually inspected while under leakage test pressure. Delivery hose assemblies that are not permanently attached to the cargo tank motor vehicle may be inspected separately from the cargo tank motor vehicle. This paragraph also proposes recordkeeping requirements related to the leakage test.

Section 180.416. We are proposing to add a new section to incorporate the new delivery hose assembly and piping system inspection and maintenance program for cargo tank motor vehicles transporting LPG and anhydrous ammonia. The new section includes requirements for marking delivery hose assemblies, post-delivery hose checks, monthly inspections and tests, annual inspections and tests, and testing new and repaired delivery hose assemblies. The section also includes recordkeeping requirements and rejection criteria for both delivery hose assemblies and discharge system piping.

Appendices to Part 180. We propose to add Appendices A and B to Part 180. Appendix A would outline acceptable methods for conducting periodic tests to assure that the linkages connecting an internal self-closing stop valve to its remote actuators on a cargo tank in other than metered delivery service will move freely when activated by the operator. Appendix B would outline acceptable leakage tests, including the ''meter creep test,'' for an internal self-closing stop valve on a cargo tank in metered delivery service.

V. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866. The rule is considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034) because of public interest. A preliminary regulatory evaluation is available for review in the docket.

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal hazardous materials transportation law, 49 U.S.C. 5701–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) The designation, description, and classification of hazardous material;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(v) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule addresses covered subjects under items (i) through (v) above and, if adopted, would preempt state, local, or Indian tribe requirements not meeting the ''substantively the same'' standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that if RSPA issues a regulation concerning any of the covered subjects RSPA must determine and publish in the **Federal Register** the effective date of federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted. RSPA proposes that the effective date of federal preemption for these requirements be 90 days after a final rule is issued in this rulemaking.

C. Executive Order 13084

This proposed rule has not been analyzed in accordance with the principles and criteria in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because revised rules and regulations resulting from this NPRM are not expected to significantly or uniquely affect communities of Indian tribal governments, the funding and consultation requirements of this Executive Order do not apply. Nevertheless, this NPRM specifically requests comments from affected persons, including Indian tribal governments, as to its potential impact.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. Based on the assessment in the preliminary regulatory evaluation, I hereby certify that the proposed rule would not have a significant economic impact on a substantial number of small businesses.

Need for the proposed rule. The goal of the proposed regulations is to enhance transportation safety by improving the regulations governing the unloading of liquefied compressed gases from MC 330, MC 331 and certain nonspecification cargo tanks. Concerns about emergency discharge control on some of these cargo tanks were identified following an incident in 1996. In 1997, RSPA adopted an interim final rule establishing certain temporary regulations under which cargo tanks could remain in service while RSPA evaluated this incident and other situations in which liquefied compressed gases were released unintentionally from cargo tanks during unloading operations. The interim final rule expires July 1, 1999. The proposals in this NPRM are intended to replace the provisions of the interim final rule with a comprehensive safety program intended to reduce the risk of an unintentional release of a liquefied compressed gas during unloading, assure prompt detection and control of an unintentional release, and make the regulatory requirements easier to understand and comply with.

Objectives and legal basis for the proposed rule. As indicated above and in previous rulemakings under Docket HM–225 (RSPA–97–2133), the goal of this rulemaking is to enhance safety in transportation through improvements in the regulations governing the unloading of liquefied compressed gases from MC 330, MC 331, and certain nonspecification cargo tanks. Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*) directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce. Section 5103(b) specifies that the regulations shall apply to persons transporting hazardous materials in commerce; causing hazardous materials to be transported in commerce; or manufacturing, marking, maintaining, reconditioning, repairing, or testing a packaging or container that is represented, marked, certified, or sold by such persons as qualified for use in transporting hazardous materials in commerce.

Identification of potentially affected small entities. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration, the definition of ''small business'' has the same meaning as under the Small Business Act. Therefore, since no such special definition has been established, RSPA employs the thresholds (published in 13 *CFR* 121.201) of 100 employees for wholesale trade in general and $5,000,000 annual sales for retail trade in general.

1. Liquefied petroleum gas dealers constitute the principal type of business on which new costs for compliance will be imposed by this rule. Using the Small Business Administration definitions and the latest (1992) available *Census of Retail Trade,* it appears that over 95 percent of retail liquefied petroleum gas dealers must be considered small businesses for purposes of the Regulatory Flexibility Act. In the 1992 Census, they accounted for over 50 percent of business locations and almost 43 percent of annual sales. Unpublished 1992 *Census of Wholesale Trade* figures provided to RSPA by the U.S. Bureau of the Census indicate that over 95 percent of merchant wholesalers of liquefied petroleum gas must be considered small businesses; they account for approximately 40 percent of annual sales and over 50 percent of business locations.

In addition to liquefied petroleum gas dealers, shippers and transporters of liquefied compressed gases such as anhydrous ammonia, chlorine and other materials classified as poisonous by inhalation, and refrigerant gases would incur new compliance costs associated with the proposed rule. The Small Business Administration threshold for manufacturers of industrial gases (SIC 2813) is 1,000 employees, as is the threshold established for manufacturers of nitrogenous fertilizers (SIC 2873). For motor freight transportation and warehousing (Major Group 42), the threshold is annual revenues of $18.5 million. Using these criteria, RSPA estimates that at least 90 percent of shippers and transporters of liquefied compressed gases, in bulk, are small businesses.

Shippers and transporters of liquefied compressed gases would incur compliance costs in the amounts outlined in the preliminary regulatory evaluation for implementation of hose management and discharge system inspection and maintenance programs, installation of new emergency discharge control equipment on cargo tanks, and for revised unloading procedures. For a small propane marketer that operates three smaller cargo tank motor vehicles used in local retail deliveries of propane, RSPA estimates an increased cost of operation of $804 per year, including increased recordkeeping costs. If such a propane marketer delivers 400,000 gallons of propane per year (800 deliveries per cargo tank motor vehicle at an average rate of 166 gallons per delivery) the annual increase per gallon of product sold is $0.00201. RSPA fully anticipates that this additional cost of operation would be passed along to the consumer. On a typical delivery of 166 gallons of propane, the additional charge attributed to new requirements proposed in this rule come to $0.33. Considering that the national average residential price of propane on January 18, 1999 was $0.890 per gallon, RSPA determined that there would be no significant economic impact, in terms of lost sales or otherwise, on a small propane marketer that increases the price of residential propane to $0.892 per gallon.

2. Besides shippers and transporters of liquefied compressed gases, cargo tank assembly, repair, or requalification facilities will also incur compliance costs associated with the proposed rule that requires installation of certain equipment on the cargo tank must be examined by a Registered Inspector. For these entities, the Small Business Administration threshold is 1,000 employees (SIC 3795). There are about 150 assembly, repair, or requalification facilities currently registered with RSPA to handle MC 331 cargo tanks. RSPA estimates that at least 90 percent of these entities are small businesses. Under the proposed rule, assembly, repair, and requalification facilities will incur compliance costs associated with certifying the installation of emergency discharge control equipment. Each of those facilities has filed a self-certified registration statement with RSPA and must re-register every 6 years. Under its current OMB approval (2137-0014), RSPA estimated that the time required to prepare and file an initial registration statement with RSPA is 20 minutes, and re-registrations require 15 minutes, at an average cost of $20 per hour. Over a six-year period, the annual cost is little more than $1. Here again, RSPA determined that there would be no significant economic impact on any small facility that would need to file a registration statement in the future.

Related federal rules and regulations. The Department of Labor's Occupational

Safety and Health Administration (OSHA) issues regulations related to safe handling, including containment and transfer operations, of hazardous materials, including liquefied compressed gases, in the workplace. These regulations are codified at 29 CFR Part 1910. Where both agencies have issued rules related to specific materials or operations, the OSHA rules defer to the RSPA regulations.

Alternate proposals for small businesses. The Regulatory Flexibility Act suggests that it may be possible to establish exceptions and differing compliance standards for small business and still meet the objectives of the applicable regulatory statutes. However, given the importance of small business, as defined for purposes of the Regulatory Flexibility Act, in liquefied compressed gas distribution and especially in its retail sector, RSPA believes that it would not be possible to establish such differing standards and still accomplish the objectives of federal hazardous materials transportation law.

While certain regulatory actions may affect the competitive situation of an industry by imposing relatively greater burdens on small-scale than on large-scale enterprises, RSPA does not believe that this will be the case with the proposed rule. The principal types of compliance expenditures effectively required by the proposed rule are new requirements for discharge system inspection and maintenance and new requirements for emergency discharge control equipment. These expenditures are imposed on each vehicle, whether operated within a large or a small fleet.

At the same time, RSPA notes that the proposed rules were developed under the assumption that small businesses comprise an overwhelming majority of entities that would be compelled to comply. The NPRM was developed through a negotiated rulemaking process by a committee that included representatives of the interests affected by the regulations, including businesses that transport and deliver liquefied petroleum gases, anhydrous ammonia and other liquefied compressed gases; manufacturers and operators of cargo tanks and vehicle components; and state and local public safety and emergency response agencies. Many of the committee members represented small businesses. In developing the proposed rules, the negotiated rulemaking committee considered each requirement and agreed that the overall safety benefits of the proposed regulations justify the compliance costs that the regulated industry will incur.

RSPA is proposing a two-year period for development and testing of new technologies for emergency discharge control and plans to provide support for development and testing of such technology in a cooperative effort with industry. RSPA anticipates that this effort will parallel training and research conducted by organizations such as the Propane Education and Research Council, the National Propane Gas Association, The Fertilizer Institute, and the Compressed Gas Association. Key elements of the progress review and study may include: (1) surveying and cataloging industry efforts; (2) identification and communication of successes and problems; (3) monitoring or performing critical research and development; and (4) testing.

Further, to minimize the compliance burden, RSPA is proposing a five-year retrofit period for installation of new emergency discharge control equipment on a schedule consistent with a cargo tank's five-year pressure retest date. This schedule saves the industry the cost of taking a vehicle out of service more than once during the five-year period and avoids conflicts with the peak periods of use of cargo tanks in liquefied petroleum gas and anhydrous ammonia service.

Moreover, RSPA recognizes that, beginning in the spring of 1997, several operators of cargo tanks transporting liquefied compressed gases installed off-truck remote control devices in an effort to address RSPA's concern over emergency discharge control. Companies that installed off-truck remote shut-offs designed to close the internal self-closing stop valve should not be required to retrofit their vehicles to meet the requirements for off-truck remote shut-off devices being proposed here. Thus, RSPA is proposing that cargo tank motor vehicles that are equipped with off-truck remote shut-off devices that close the internal self-closing stop valve will not be subject to the retrofit requirements if the systems were installed prior to one year after the effective date of the final rule.

In addition, RSPA is proposing that nonspecification cargo tanks authorized for liquefied petroleum gas service under § 173.315(k) of the Hazardous Materials Regulations, which are limited to intrastate operations, be permitted to cross state lines for the purpose of traveling to or from a qualified assembly, repair, maintenance, or requalification facility. This will save operators the cost of traveling to a facility within the state in which they operate when there is a closer facility in a neighboring state.

Conclusion. RSPA has determined that the cost of complying with the proposed requirements, including proposed new recordkeeping requirements, should not significantly affect the cost of transporting and delivering liquefied compressed gases. Based on this initial analysis, RSPA believes that the proposed rules will not impose a substantial economic burden on a significant number of small businesses or other small entities.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. RSPA has a current information collection approval under OMB No. 2137–0595, Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service, which expires July 1, 1999, with 8,300 burden hours and an annual cost of $85,000. RSPA believes that this proposed rule may result in an increase in annual burden hours and costs. If these proposals are finalized, RSPA will revise the current approval and resubmit it to OMB for extension and re-approval.

Section 1320.8(d), Title 5, Code of Federal Regulations, requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This proposal identifies information collection that RSPA may submit to OMB for extension and re-approval based on the requirements in this proposed rule. RSPA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in this proposed rule since the information collection was last approved. RSPA estimates that the total information collection and recordkeeping burden for transportation and unloading of cargo tank motor vehicles in liquefied compressed gas service requirements would be revised as follows:

OMB No.: 2137–0595.

Number of Respondents: 6,958.

Total Annual Responses: 920,530.

Total Annual Burden Hours: 200,615.

Total Annual Burden Cost: $2,621,141.

One Time Annual Start Up Burden Hours: 14,490.

One Time Annual Start Up Cost: $161,615.

Total Responses for First Year: 990,563.

Total Annual Burden Hours for First Year: 215,105.

Total Annual Burden Cost for First Year: $2,782,756.

RSPA specifically requests comments on the information collection and recordkeeping burdens associated with

developing, implementing, and maintaining these requirements for transportation and unloading of cargo tank motor vehicles in liquefied compressed gas service under this proposed rule.

Requests for a copy of the information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

Written comments should be addressed to the Dockets Management System as identified in the **ADDRESSES** section of this rulemaking. Comments should be received prior to the close of comment period identified in the **DATES** section of this rulemaking.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. If these proposed requirements are adopted in a final rule, RSPA will submit the revised information collection and recordkeeping requirements to the Office of Management and Budget for approval.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN containing in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This proposed rule imposes no mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

H. Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize ''double zero'' not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This proposed rule does not propose business process changes or require modifications to computer systems. Because this proposed rule apparently does not affect organizations' ability to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the proposed requirements.

I. Environmental Assessment

RSPA finds that there are no significant environmental impacts associated with proposed regulations resulting from the negotiated rulemaking to develop safety standards for preventing and mitigating unintentional releases during the unloading of cargo tank motor vehicles in liquefied compressed gas service. A copy of the environmental assessment has been placed in the public docket for this rulemaking.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR Parts 171, 173, 177, 178, and 180 as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.5 [Removed]

2. Section 171.5 would be removed.

3. In § 171.7, in the table in paragraph (a)(3), a new entry would be added in alphanumeric sequence, under the Chlorine Institute, Inc., to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
Chlorine Institute, Inc.	
* * * * * * *	
Section 3, Pamphlet 57, Emergency Shut-Off Systems for Bulk Transfer of Chlorine	177.840
* * * * * * *	

4. In § 171.7, in the table in paragraph (a)(3), the following changes would be made:

a. Under ''Chlorine Institute, Inc.,'' for the entry ''Standard Chlorine Angle Valve Assembly,'' the wording ''104–6, December 1, 1982'' would be revised to read ''104–8, July 1, 1993.''

b. Under ''Chlorine Institute, Inc.,'' for the entry ''Excess Flow Valve with Removable Seat,'' the wording ''101–6, September 1, 1973'' would be revised to read ''101–7, July 1, 1993'' and, in column 2, the reference ''178.337–11'' would be revised to read ''178.337–8.''

c. Under ''Chlorine Institute, Inc.,'' for the entry ''Excess Flow Valve with Removable Basket,'' the wording ''106–5, September 1, 1973'' would be revised to read ''106–6, July 1, 1993'' and, in column 2, the reference ''178.337–11'' would be revised to read ''178.337–8.''

5. In § 171.8, the following definition would be added in alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Metered delivery service means a cargo tank unloading operation conducted at a metered flow rate of 378.5 liters (100 gallons) per minute or less through an attached delivery hose with a nominal inside diameter of 3.175 centimeters (1¼ inches) or less.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

6. The authority citation for part 173 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53.

7. In § 173.315, paragraphs (k) and (n) would be revised and paragraph (p) would be added to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

* * * * *

(k) A nonspecification cargo tank meeting, and marked in conformance with, the edition of the ASME Code in effect when it was fabricated may be used for the transportation of liquefied petroleum gas provided it meets all of the following conditions:

(1) It must have a minimum design pressure no lower than 250 psig.

(2) It must have a capacity of 13,247.5 liters (3,500 water gallons) or less.

(3) It must have been manufactured in conformance with the ASME Code prior to January 1, 1981, according to its ASME name plate and manufacturer's data report.

(4) It must conform to applicable provisions of NFPA Pamphlet 58, except to the extent that provisions of Pamphlet 58 are inconsistent with requirements in parts 178 and 180 of this subchapter.

(5) It must be inspected, tested, and equipped in accordance with subpart E of part 180 of this subchapter as specified for MC 331 cargo tanks.

(6) Except as provided in this paragraph (k), it must be operated exclusively in intrastate commerce, including its operation by a motor carrier otherwise engaged in interstate commerce, in a state where its operation was permitted by law (not including the incorporation of this subchapter) prior to January 1, 1981. A cargo tank motor vehicle operating under authority of this section may cross state lines to travel to and from a qualified assembly, repair, maintenance, or requalification facility. The cargo tank need not be cleaned and purged, but it may not contain liquefied petroleum gas in excess of five percent of the water capacity of the cargo tank. If the vehicle engine is supplied fuel from the cargo tank, enough fuel in excess of five percent of the cargo tank's water capacity may be carried for the trip to or from the facility.

(7) It must have been used to transport liquefied petroleum gas prior to January 1, 1981.

(8) It must be operated in conformance with all other requirements of this subchapter.

* * * * *

(n) *Emergency discharge control for cargo tanks in liquefied compressed gas service*—(1) Required emergency discharge control equipment. Each cargo tank in liquefied compressed gas service must have an emergency discharge control capability as specified in the following table:

§ 173.315(n)(1)(*)	Material	Delivery service	Required emergency discharge control capability
(i)	Division 2.2 materials with no subsidiary hazard, excluding anhydrous ammonia.	All	None.
(ii)	Division 2.3 materials	All	Paragraph (n)(2) of this section.
(iii)	Division 2.2 materials with a subsidiary hazard, Division 2.1 materials, and anhydrous ammonia.	Other than metered delivery service.	Paragraph (n)(2) of this section.
(iv)	Division 2.2 materials with a subsidiary hazard, Division 2.1 materials, and anhydrous ammonia in a cargo tank with a capacity of 13,247.5 liters (3,500 water gallons) or less.	Metered delivery service.	Paragraph (n)(3) of this section.
(v) Division 2.2 materials with a subsidiary hazard, Division 2.1 materials, and anhydrous ammonia in a cargo tank with a capacity greater than 13,247.5 liters (3,500 water gallons).	Metered delivery service	Paragraph (n)(3) of this section, and, for obstructed view deliveries where permitted by § 177.840(p) of this subchapter, paragraphs (n)(3) or (n)(4) of this section..	

(2) *Cargo tank motor vehicles in other than metered delivery service.* A cargo tank motor vehicle in other than metered delivery service must have a means to automatically shut off the flow of product without the need for human intervention within 20 seconds of an unintentional release caused by a complete separation of a liquid delivery hose (passive shut-down capability).

(i) Designed flow of product through a bypass in the valve is acceptable when authorized by this subchapter.

(ii) The design for the means to automatically shut off product flow must be certified by a Design Certifying Engineer. The certification must consider any specifications of the original component manufacturer and must explain how the passive means to shut off the flow of product operates. It must also outline the parameters (e.g., temperature, pressure, types of product) within which the passive means to shut off the flow of product is designed to operate. All components of the discharge system that are integral to the design must be included in the certification. A copy of the design certification must be provided to the

owner of the cargo tank on which the equipment will be installed.

(iii) Installation must be performed under the supervision of a Registered Inspector unless the equipment is installed and removed as part of regular operation (e.g., a hose). The Registered Inspector must certify that the equipment is installed and tested, if possible without destruction of the equipment, in accordance with the Design Certifying Engineer's certification. The Registered Inspector must provide the certification to the owner of the cargo tank motor vehicle.

(3) *Cargo tanks in metered delivery service.* When required by the table in paragraph (n)(1) of this section, a cargo tank motor vehicle must have an off-truck remote means to close the internal self-closing stop valve and shut off all motive and auxiliary power equipment upon activation by a qualified person attending the unloading of the cargo tank motor vehicle (off-truck remote shut-off). It must function reliably at a distance of 45.72 meters (150 feet). The off-truck remote shut-off activation device must not be capable of reopening the internal self-closing stop valve after emergency activation.

(i) The emergency discharge control equipment must be installed under the supervision of a Registered Inspector. Each wireless transmitter/receiver must be tested to demonstrate that it will close the internal self-closing stop valve and shut off all motive and auxiliary power equipment at a distance of 91.44 meters (300 feet) under optimum conditions. Emergency discharge control equipment that does not employ a wireless transmitter/receiver must be tested to demonstrate its functioning at the maximum length of the delivery hose.

(ii) The Registered Inspector must certify that the remote control equipment is installed in accordance with the original component manufacturer's specifications and is tested in accordance with paragraph (n)(3)(i) of this section. The Registered Inspector must provide the owner of the cargo tank with this certification.

(4) *Query systems.* When a transmitter/receiver system is used to satisfy the requirements of paragraph (n)(1)(v) of this section, it must close the internal self-closing stop valve and shut off all motive and auxiliary power equipment unless the qualified person attending the unloading operation prevents it from doing so at least once every five minutes. Testing and certification must be as specified in paragraph (n)(3) of this section.

(5) *Compliance dates.* (i) Each specification MC 331 cargo tank motor vehicle with a certificate of construction issued two or more years after [the effective date of the final rule] must have an appropriate emergency discharge control capability as specified in this paragraph (n).

(ii) No MC 330, MC 331, or nonspecification cargo tank motor vehicle authorized under paragraph (k) of this section may be operated unless it has an appropriate emergency discharge control capability as specified in this paragraph (n) no later than the date of its first scheduled pressure retest required after [two years after the effective date of the final rule]. No MC 330, MC 331 or nonspecification cargo tank motor vehicle authorized under paragraph (k) of this section may be operated after [seven years after the effective date of the final rule] unless it has been equipped with emergency discharge control equipment as specified in this paragraph (n).

(iii) No MC 330, MC 331, or nonspecification cargo tank motor vehicle authorized under paragraph (k) of this section, with a capacity over 13,247.5 liters (3,500 gallons) used in metered delivery service may be operated unless it has an appropriate emergency discharge control capability as specified in this paragraph (n) no later than [four years after the effective date of the final rule].

* * * * *

(p) *Fusible elements.* Each MC 330, MC 331, or nonspecification cargo tank authorized under paragraph (k) of this section must have a thermal means of closure for each internal self-closing stop valve as specified in § 178.337–8(a)(4) of this subchapter.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

8. The authority citation for part 177 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

9. In § 177.834, paragraph (i)(5) would be removed and paragraph (i)(3) would be revised to read as follows:

§ 177.834 General requirements.

* * * * *

(i) Attendance requirements. * * *

(3) Except for unloading operations subject to §§ 177.840(p) or (q), a qualified person ''attends'' the loading or unloading of a cargo tank if, throughout the process, he is alert and is within 7.62 meters (25 feet) of the cargo tank. The qualified person attending the unloading of a cargo tank must have an unobstructed view of the cargo tank and delivery hose to the maximum extent practicable during the unloading operation.

* * * * *

10. In § 177.840, paragraphs (l) through (u) would be added to read as follows:

§ 177.840 Class 2 (gases) materials.

* * * * *

(l) *Operating procedure.* Six months after effective date of final rule, each operator of a cargo tank motor vehicle transporting a liquefied compressed gas must carry on or within the cargo tank motor vehicle written emergency discharge control procedures for all delivery operations. The procedures must describe the cargo tank motor vehicle's emergency discharge control features and, for a passive shut-down capability, the parameters within which they are designed to function. The procedures must describe the process to be followed if using a facility-provided hose for unloading when the cargo tank motor vehicle has a specially equipped delivery hose assembly to meet the requirements of § 173.315(n)(2) of this subchapter.

(m) *Cargo tank safety check.* Before unloading from a cargo tank motor vehicle containing a liquefied compressed gas, the qualified person performing the function must check those components of the discharge system, including delivery hose assemblies and piping, that are readily observed during the normal course of unloading to assure that they are of sound quality, without obvious defects detectable through visual observation and audio awareness, and that connections are secure. This check must be made after the pressure in the discharge system has reached at least equilibrium with the pressure in the cargo tank. Operators need not use instruments or take extraordinary actions to check components not readily visible. No operator may unload liquefied compressed gases from a cargo tank motor vehicle with a delivery hose assembly found to have any condition identified in § 180.416 (g)(1) of this subchapter or with piping systems found to have any condition identified in § 180.416 (g)(2) of this subchapter.

(n) *Emergency shut down.* If there is an unintentional release of product to the environment during unloading of a liquefied compressed gas, the qualified person unloading the cargo tank motor vehicle must promptly shut the internal self-closing stop valve or other primary means of closure and shut down all motive and auxiliary power equipment.

(o) *Daily test of off-truck remote shut-off activation device.* For a cargo tank motor vehicle equipped with an off-

truck remote means to close the internal self-closing stop valve and shut off all motive and auxiliary power equipment, an operator must successfully test the activation device within 18 hours prior to the first delivery of each day. For a wireless transmitter/receiver, the person conducting the test must be at least 45.72 meters (150 feet) from the cargo tank and may have the cargo tank in his line of sight.

(p) *Unloading procedures for liquefied petroleum gas and anhydrous ammonia in metered delivery service.* An operator must use the following procedures for unloading liquefied petroleum gas or anhydrous ammonia from a cargo tank motor vehicle in metered delivery service:

(1) For a cargo tank with a capacity of 13,247.5 liters (3,500 water gallons) or less, excluding delivery hose and piping, the qualified person attending the unloading operation must remain within 45.72 meters (150 feet) of the cargo tank and 7.62 meters (25 feet) of the delivery hose and must observe both the cargo tank and the receiving container at least once every five minutes when the internal self-closing stop valve is open during unloading operations that take more than five minutes to complete.

(2) For a cargo tank with a capacity greater than 13,247.5 liters (3,500 water gallons), excluding delivery hose and piping, the qualified person attending the unloading operation must remain within 45.72 meters (150 feet) of the cargo tank and 7.62 meters (25 feet) of the delivery hose when the internal self-closing stop valve is open.

(i) Except as provided in paragraph (p)(2)(ii) of this section, the qualified person attending the unloading operation must have an unobstructed view of the cargo tank and delivery hose to the maximum extent practicable, except during short periods when it is necessary to activate controls or monitor the receiving container.

(ii) For deliveries where the qualified person attending the unloading operation cannot maintain an unobstructed view of the cargo tank, when the internal self-closing stop valve is open, the qualified person must observe both the cargo tank and the receiving container at least once every five minutes during unloading operations that take more than five minutes to complete. In addition, by the compliance dates specified in §§ 173.315(n)(5) and 180.405(m)(3) of this subchapter, the cargo tank motor vehicle must have an emergency discharge control capability that meets the requirements of § 173.315(n)(2) or § 173.315(n)(4) of this subchapter.

(q) *Unloading procedures for liquefied petroleum gas and anhydrous ammonia in other than metered delivery service.* An operator must use the following procedures for unloading liquefied petroleum gas or anhydrous ammonia from a cargo tank motor vehicle in other than metered delivery service:

(1) The qualified person attending the unloading operation must remain within 7.62 meters (25 feet) of the cargo tank when the internal self-closing stop valve is open.

(2) The qualified person attending the unloading operation must have an unobstructed view of the cargo tank and delivery hose to the maximum extent practicable, except during short periods when it is necessary to activate controls or monitor the receiving container.

(r) *Unloading using facility-provided hoses.* A cargo tank motor vehicle equipped with a specially designed delivery hose assembly to meet the requirements of § 173.315(n)(2) of this subchapter may be unloaded using a delivery hose assembly provided by the receiving facility under the following conditions:

(1) The qualified person monitoring unloading must visually examine the facility hose assembly for obvious defects prior to its use in the unloading operation.

(2) The qualified person monitoring unloading must remain within arm's reach of the mechanical means of closure for the internal self-closing stop valve when the internal self-closing stop valve is open except for short periods when it is necessary to activate controls or monitor the receiving container.

(s) *Off-truck remote shut-off activation device.* For a cargo tank motor vehicle with an off-truck remote control shut-off capability as required by §§ 173.315(n)(3) or (n)(4) of this subchapter, the qualified person attending the unloading operation must be in possession of the activation device at all times during the unloading process. This requirement does not apply if the activation device is part of a system that will shut off the unloading operation without human intervention in the event of a leak or separation in the hose.

(t) *Unloading without appropriate emergency discharge control equipment.* Until a cargo tank is equipped with emergency discharge control equipment in conformance with §§ 173.315(n)(2) and 180.405(m)(1) of this subchapter, the qualified person attending the unloading operation must remain within arm's reach of a means to close the internal self-closing stop valve except during short periods when the qualified person must activate controls or monitor the receiving container.

(u) *Unloading of chlorine cargo tanks.* Unloading of chlorine from a cargo tank must be performed in compliance with Section 3 of Pamphlet 57, Emergency Shut-off Systems for Bulk Transfer of Chlorine, of the Chlorine Institute.

PART 178—SPECIFICATIONS FOR PACKAGINGS

11. The authority citation for part 178 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

12. In § 178.337–1, new paragraph (g) would be added to read as follows:

§ 178.337–1 General requirements.

* * * * *

(g) *Definitions.* The following definitions apply to §§ 178.337–1 through 178.337–18:

Emergency discharge control means the ability to stop a cargo tank unloading operation in the event of an unintentional release. Emergency discharge control can utilize passive or off-truck remote means to stop the unloading operation. A passive means of emergency discharge control automatically shuts off the flow of product without the need for human intervention within 20 seconds of an unintentional release caused by a complete separation of the liquid delivery hose. An off-truck remote means of emergency discharge control permits a qualified person attending the unloading operation to close the cargo tank's internal self-closing stop valve and shut off all motive and auxiliary power equipment at a distance from the cargo tank motor vehicle.

Excess flow valve, integral excess flow valve, or excess flow feature means a component that will close automatically if the flow rate of a gas or liquid through the component reaches or exceeds the rated flow of gas or liquid specified by the original valve manufacturer when piping mounted directly on the valve is sheared off before the first valve, pump, or fitting downstream from the valve.

Internal self-closing stop valve means the primary shut off valve installed at a product discharge outlet of a cargo tank.

Primary discharge control system means a primary shut-off installed at a product discharge outlet of a cargo tank consisting of an internal self-closing stop valve that may include an integral excess flow valve or an excess flow feature, together with linkages that must be installed between the valve and remote actuator to provide manual and thermal on-truck remote means of closure.

13. Section 178.337–8 would be revised to read as follows:

§ 178.337–8 Openings, inlets, and outlets.

(a) *Outlets generally.* (1) An opening must be provided on each cargo tank used for the transportation of liquefied materials to permit complete drainage.

(2) Except for gauging devices, thermometer wells, pressure relief valves, manhole openings, product inlet openings, and product discharge openings, each opening in a cargo tank must be closed with a plug, cap, or bolted flange.

(3) Each product inlet opening, including vapor return lines, must be fitted with a back flow check valve located inside the cargo tank or inside a welded nozzle that is an integral part of the cargo tank. The valve seat must be located inside the cargo tank or within 2.54 centimeters (one inch) of the external face of the welded flange. Damage to parts exterior to the cargo tank or mating flange must not prevent effective seating of the valve. All parts of a valve inside a cargo tank or welded flange must be made of material that will not corrode or deteriorate in the presence of the lading.

(4) Except as provided in paragraphs (a)(5), (b), and (c) of this section, each liquid or vapor discharge outlet must be fitted with a primary discharge control system as defined in § 178.337–1(g). Thermal remote operators must activate at a temperature of 121.11°C (250 °F) or less. Linkages between closures and remote operators must be corrosion resistant and effective in all types of environmental conditions incident to discharging of product.

(i) On a cargo tank over 13,247.5 liters (3,500 gallons) water capacity, thermal and mechanical means of remote closure must be installed at the ends of the cargo tank in at least two diagonally opposite locations. If the loading/unloading connection at the cargo tank is not in the general vicinity of one of the two locations specified above, additional means of thermal remote closure must be installed so that heat from a fire in the loading/unloading connection area or the discharge pump will activate the primary discharge control system. The loading/unloading connection area is where hoses or hose reels are connected to the permanent metal piping.

(ii) On a cargo tank of 13,247.5 liters (3,500 gallons) water capacity or less, a thermal means of remote closure must be installed at or near the internal self-closing stop valve. A mechanical means of remote closure must be installed on the end of the cargo tank furthest away from the loading/unloading connection area. The loading/unloading connection area is where hoses or hose reels are connected to the permanent metal piping. Linkages between closures and remote operators must be corrosion resistant and effective in all types of environmental conditions incident to discharge of product.

(iii) All parts of a valve inside a cargo tank or within a welded flange must be made of material that will not corrode or deteriorate in the presence of the lading.

(iv) An excess flow valve, integral excess flow valve, or excess flow feature must close if the flow reaches the rated flow of a gas or liquid specified by the original valve manufacturer when piping mounted directly on the valve is sheared off before the first valve, pump, or fitting downstream from the excess flow valve, integral excess flow valve, or excess flow feature.

(v) An integral excess flow valve or the excess flow feature of an internal self-closing stop valve may be designed with a bypass, not to exceed 0.1016 centimeters (0.040 inch) diameter opening, to allow equalization of pressure.

(vi) The internal self-closing stop valve must be designed so that the self-stored energy source and the valve seat are located inside the cargo tank or within 2.54 centimeters (one inch) of the external face of the welded flange. Damage to parts exterior to the cargo tank or mating flange must not prevent effective seating of the valve.

(5) A primary discharge control system is not required on the following:

(i) A vapor or liquid discharge opening of less than 1¼ NPT equipped with an excess flow valve together with a manually operated external stop valve in place of an internal self-closing stop valve.

(ii) An engine fuel line on a truck-mounted cargo tank of not more than ¾ NPT equipped with a valve having an integral excess flow valve or feature.

(iii) A cargo tank motor vehicle certified before January 1, 1995, unless intended for use to transport a flammable liquid, flammable gas, hydrogen chloride, refrigerated liquid, or anhydrous ammonia.

(6) In addition to the internal self-closing stop valve, each filling and discharge line must be fitted with a stop valve located in the line between the internal self-closing stop valve and the hose connection. A single, so-called ''stop-check'' or excess flow valve may not be used to satisfy this requirement.

(7) An excess flow valve may be designed with a bypass, not to exceed a 0.1016 centimeter (0.040 inch) diameter opening, to allow equalization of pressure.

(b) *Discharge outlets on chlorine tanks.* Discharge outlets on cargo tanks used to transport chlorine must meet the requirements of § 178.337–1(c)(2) and must be fitted with an internal excess flow valve. In addition to the internal excess flow valve, discharge outlets must be equipped with an external stop valve (angle valve). Excess flow valves must conform to the standards of The Chlorine Institute, Inc., as follows:

(1) A valve conforming to Drawing 101–7, dated July 1993, must be installed under each liquid angle valve.

(2) A valve conforming to Drawing 106–6, dated July 1993, must be installed under each gas angle valve.

(c) *Discharge outlets on carbon dioxide, refrigerated liquid, cargo tanks.* A discharge outlet on a cargo tank used to transport carbon dioxide, refrigerated liquid is not required to be fitted with an internal self-closing stop valve.

14. In § 178.337–9, paragraph (b)(6) would be revised, paragraph (b)(7) would be redesignated as paragraph (b)(8) and revised, a new paragraph (b)(7) would be added, and paragraph (c) would be revised to read as follows:

§ 178.337–9 Pressure relief devices, piping, valves, hoses, and fittings.

* * * * *

(b) *Piping, valves, hose, and fittings.*

* * *

(6) Cargo tank manufacturers and fabricators must demonstrate that all piping, valves, and fittings on a cargo tank are free from leaks. To meet this requirement, the piping, valves, and fittings must be tested after installation at not less than 80 percent of the design pressure marked on the cargo tank.

(7) A hose assembler must:

(i) Permanently mark each hose assembly with a unique identification number.

(ii) Demonstrate that each hose assembly is free from leaks by performing the tests and inspections in § 180.416(f) of this subchapter.

(iii) Mark each hose assembly with the month and year of its original pressure test.

(8) *Chlorine cargo tanks.* Angle valves on cargo tanks intended for chlorine service must conform to Drawing 104–8, dated July 1993, in the standards of The Chlorine Institute. Before installation, each angle valve must be tested for leakage at not less than 225 psig using dry air or inert gas.

(c) *Marking inlets and outlets.* Except for safety relief valves, all cargo tank inlets and outlets must be marked ''liquid'' to designate that it communicates with liquid when the

cargo tank is filled to the maximum permitted filling density, or ''vapor'' or ''spray-fill'' to indicate a filling line that communicates with vapor when the cargo tank is filled to the maximum permitted filling density.

* * * * *

15. Section 178.337–11 would be revised to read as follows:

§ 178.337–11 Emergency discharge control.

(a) *Emergency discharge control equipment.* Emergency discharge control equipment must be installed in a liquid discharge line as specified by product and service in § 173.315(n) of this subchapter. The performance and certification requirements for emergency discharge control equipment are specified in § 173.315(n) of this subchapter and are not a part of the cargo tank motor vehicle certification made under this specification.

(b) *Engine fuel lines.* On a truck-mounted cargo tank, emergency discharge control equipment is not required on an engine fuel line of not more than 3/4 NPT equipped with a valve having an integral excess flow valve or feature.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

16. The authority citation for part 180 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR part 1.53.

17. In § 180.403, the introductory text for the definition ''Modification'' would be revised, and definitions for ''Delivery hose assembly'' and ''Piping system'' would be added in alphabetical order to read as follows:

§ 180.403 Definitions.

* * * * *

Delivery hose assembly means a liquid delivery hose and its attached couplings.

* * * * *

Modification means any change to the original design and construction of a cargo tank or a cargo tank motor vehicle that affects its structural integrity or lading retention capability including changes to equipment certified as part of an emergency discharge control system required by § 173.315(n)(2) of this subchapter. Any modification that involves welding on the cargo tank wall must also meet all requirements for ''Repair'' as defined in this section. Excluded from this category are the following:

* * * * *

Piping system means any component of a cargo tank delivery system, other than a delivery hose assembly, that contains product during loading or unloading.

* * * * *

18. In § 180.405, paragraphs (m) and (n) would be added to read as follows:

§ 180.405 Qualification of cargo tanks.

* * * * *

(m) *Specification MC 330, MC 331 cargo tank motor vehicles, and nonspecification cargo tank motor vehicles conforming to § 173.315(k) of this subchapter, intended for use in the transportation of liquefied compressed gases.*

(1) No later than the date of its first scheduled pressure test after [two years after the effective date of the final rule], each specification MC 330 and MC 331 cargo tank motor vehicle, and each nonspecification cargo tank motor vehicle conforming to § 173.315(k) of this subchapter, marked and certified before [two years after the effective date of the final rule], that is used to transport a Division 2.1 material, a Division 2.2 material with a subsidiary hazard, a Division 2.3 material, or anhydrous ammonia must have an emergency discharge control capability as specified in § 173.315(n) of this subchapter. Each passive shut-off system installed prior to [two years after the effective date of the final rule] must be certified by a Design Certifying Engineer that it meets the requirements of § 173.315(n)(2) of this subchapter.

(2) The requirement in paragraph (m)(1) of this section does not apply to a cargo tank equal to or less than 13,247.5 liters (3,500 gallons) water capacity transporting a Division 2.1 material, a Division 2.2 material with a subsidiary hazard, or anhydrous ammonia in metered delivery service equipped with an off-truck remote shut-off device that was installed prior to [one year after the effective date of the final rule]. The device must be capable of stopping the transfer of lading by operation of a transmitter carried by a qualified person attending unloading of the cargo tank. The device is subject to the requirement in § 177.840(o) of this subchapter for a daily test at 45.72 meters (150 feet).

(3) Each specification MC 330 and MC 331 cargo tank of greater than 13,247.5 liters (3,500 gallons) water capacity transporting a Division 2.1 material, a Division 2.2 material with a subsidiary hazard, or anhydrous ammonia in metered delivery service, marked and certified before [the effective date of final rule], must have an emergency discharge control capability as specified in §§ 173.315(n) and 177.840 of this subchapter no later than the date of its first scheduled pressure test after [two years after the effective date of the final rule or four years after the effective date of the final rule], whichever is earlier.

(n) *Thermal activation.* No later than the date of its first scheduled leakage test after [the effective date of final rule], each specification MC 330 or MC 331 cargo tank motor vehicle and each nonspecification cargo tank motor vehicle conforming to § 173.315(k) of this subchapter, marked and certified before [the effective date of final rule], that is used to transport a liquefied compressed gas, other than carbon dioxide and chlorine, that has a water capacity of 13,247.5 liters (3,500 gallons) or less must be equipped with a means of thermal activation for the internal self-closing stop valve as specified in § 178.337–8(a)(4) of this subchapter.

19. In § 180.407, paragraph (h)(1)(iii) would be added, existing paragraphs (h)(4) through (h)(8) would be redesignated as paragraphs (h)(5) through (h)(9), respectively, and a new paragraph (h)(4) would be added to read as follows:

§ 180.407 Requirements for test and inspection of specification cargo tanks.

* * * * *

(h) *Leakage test.* (1) * * *

(iii) An operator of a specification MC 330 or MC 331 cargo tank, and a nonspecification cargo tank authorized under § 173.315(k) of this subchapter, equipped with a meter may check leak tightness of the internal self-closing stop valve by conducting a meter creep test. (See Appendix B to this part.)

* * * * *

(4) Registered Inspectors of specification MC 330 and MC 331 cargo tanks, and nonspecification cargo tanks authorized under § 173.315(k) of this subchapter must visually inspect the delivery hose assembly and piping system while the assembly is under leakage test pressure utilizing the rejection criteria listed in § 180.416(g). Delivery hose assemblies not permanently attached to the cargo tank motor vehicle may be inspected separately from the cargo tank motor vehicle. In addition to a written record of the inspection prepared in accordance with § 180.417(b), the Registered Inspector conducting the hose test must note the hose identification number, the date of the original hose assembly test, and the condition of the hose assembly and piping system tested.

* * * * *

20. Section 180.416 would be added to read as follows:

§ 180.416 Discharge system inspection and maintenance program for cargo tanks transporting liquefied compressed gases.

(a) *Applicability.* This section is applicable to an operator using specification MC 330, MC 331, and nonspecification cargo tanks authorized under § 173.315(k) of this subchapter for transportation of liquefied compressed gases other than carbon dioxide. Paragraphs (b), (c), (d)(1), (d)(5), (e), (f), and (g)(1) of this section, applicable to delivery hoses, apply only to hoses installed or carried on the cargo tank.

(b) *Hose identification.* [One year after the effective date of the final rule], the operator must assure that each delivery hose assembly is permanently marked with a unique identification number and maximum working pressure.

(c) *Post-delivery hose check.* After each unloading, the operator must visually check that portion of the delivery hose assembly deployed during the unloading.

(d) *Monthly inspections and tests.* (1) The operator must visually inspect each delivery hose assembly at least once each month the delivery hose assembly is in service.

(2) The operator must visually inspect the piping system at least once each month the cargo tank is in service. The inspection must include fusible elements and all components of the piping system, including bolts, connections, and seals.

(3) At least once each month a cargo tank is in service, the operator must actuate all emergency discharge control devices designed to close the internal self-closing stop valve to assure that all linkages operate as designed. Appendix A to this part outlines acceptable procedures that may be used for this test.

(4) The operator of a cargo tank must check the internal self-closing stop valve in the liquid discharge opening for leakage through the valve at least once each month the cargo tank is in service. On cargo tanks equipped with a meter, the meter creep test as outlined in Appendix B to this part or a test providing equivalent accuracy is acceptable. For cargo tanks that are not equipped with a meter, Appendix B to this part outlines one acceptable method that may be used to check internal self-closing stop valves for closure.

(5) The operator must note each inspection in a record. That record must include the inspection date, the name of the person performing the inspection, the hose assembly identification number, the company name, the date the hose was assembled and tested, and an indication that the delivery hose and piping system passed or failed the tests and inspections.

(e) *Annual hose leakage test.* The owner of a hose assembly that is not permanently attached to a cargo tank motor vehicle must ensure that the hose is annually tested in accordance with § 180.407(h)(4).

(f) *New or repaired delivery hose assemblies.* Each operator of a cargo tank must ensure each new and repaired hose assembly is tested at a minimum of 120 percent of the hose maximum working pressure.

(1) The operator must visually examine the delivery hose assembly while it is under pressure.

(2) Upon successful completion of the pressure test and inspection, the operator must assure that the delivery hose assembly is permanently marked with the month and year of the test.

(3) The operator must complete a record documenting the test and inspection, including the date, the signature of the inspector, the hose owner, the hose identification number, the date of original hose assembly and test, notes of any defects observed and repairs made, and an indication that the delivery hose passed or failed the tests and inspections.

(g) *Rejection criteria.* (1) No operator may use a delivery hose assembly determined to have any condition identified below for unloading liquefied compressed gases. An operator may remove and replace damaged sections or correct defects discovered. Repaired hoses may be placed back in service if retested successfully in accordance with paragraph (f) of this section.

(i) Damage to the hose cover that exposes the reinforcement.

(ii) Wire braid reinforcement that has been kinked or flattened so as to permanently deform the wire braid.

(iii) Soft spots when not under pressure, bulging under pressure, or loose outer covering.

(iv) Damaged, slipping, or excessively worn hose couplings.

(v) Loose or missing bolts or fastenings on bolted hose coupling assemblies.

(2) No operator may use a cargo tank with a piping system found to have any condition identified below for unloading liquefied compressed gases.

(i) Any external leak identifiable without the use of instruments.

(ii) Bolts that are loose, missing, or severely corroded.

(iii) Manual stop valves that will not actuate.

(iv) Rubber hose flexible connectors with any condition outlined in paragraph (g)(1) of this section.

(v) Stainless steel flexible connectors with damaged reinforcement braid.

(vi) Internal self-closing stop valves that fail to close or that permit leakage through the valve detectable without the use of instruments.

(vii) Pipes or joints that are severely corroded.

21. In § 180.417, paragraph (a)(1) would be revised to read as follows:

§ 180.417 Reporting and record retention requirements.

(a) *Vehicle certification.* (1) Each owner of a specification cargo tank must retain the manufacturer's certificate, the manufacturer's ASME U1A data report, where applicable, and related papers certifying that the specification cargo tank identified in the documents was manufactured and tested in accordance with the applicable specification. This would include any certification of emergency discharge control systems required by § 173.315(n) of this subchapter or § 180.405(m). The owner must retain the documents throughout his ownership of the specification cargo tank and for one year thereafter. In the event of a change in ownership, the prior owner must retain non-fading photo copies of these documents for one year.

* * * * *

22. Appendices A and B would be added to Part 180 to read as follows:

Appendix A to Part 180—Internal Self-closing Stop Valve Emergency Closure Test for Liquefied Compressed Gases

1. In performing this test, all internal self-closing stop valves must be opened. Each emergency discharge control remote actuator (on-truck and off-truck) must be operated to ensure that each internal self-closing stop valve's lever, piston, or other valve indicator has moved to the closed position.

2. On pump-actuated pressure differential internal valves, the three-way toggle valve handle or its cable attachment must be activated to verify that the toggle handle moves to the horizontal position.

Appendix B to Part 180— Acceptable Internal Self-closing Stop Valve Leakage Tests for Cargo Tanks Transporting Liquefied Compressed Gases

For internal self-closing stop valve leakage testing, leakage is defined as any leakage through the internal self-closing valve or to the atmosphere that is detectable when the valve is in the closed position. On some valves this will require the closure of the pressure by-pass port.

(a) *Meter Creep Test.*

1. An operator of a cargo tank equipped with a certified meter may check the internal self-closing stop valve for leakage through the valve seat using the meter as a flow measurement indicator. The test is initiated

by starting the delivery process or returning product to the cargo tank through the delivery system at normal pump operating conditions. This may be performed at an idle. After the flow is established, the operator closes the internal self-closing stop valve and monitors the meter flow. The meter flow must stop within 30 seconds with no meter creep within 5 seconds after the meter stops.

2. On pump-actuated pressure differential internal self-closing stop valves, the valve must be closed with the remote actuator to assure that it is functioning. On other types of internal self-closing stop valves, the valve(s) may be closed using either the normal valve control or the discharge control system (e.g., remote).

3. For the purposes of this section, a ''certified meter'' is any meter that has undergone an annual certification by a local or state approved certification process for the material(s) being metered. The certification must be within the previous 12-month period to meet the monthly test criteria, or within the past 60 days for the annual leakage test prescribed in § 180.407(h).

4. Rejection criteria: Any detectable meter creep within the first five seconds after initial meter stoppage.

(b) *Internal Self-Closing Stop Valve Test.*

An operator of a cargo tank that is not equipped with a certified meter may check the internal self-closing stop valve(s) for leakage as follows:

1. The internal self-closing stop valve must be in the closed position.

2. All of the material in the downstream piping must be evacuated, and the piping must be returned to atmospheric temperature and pressure.

3. The outlet must be monitored for 30 seconds for detectable leakage.

4. Rejection criteria. Any detectable leakage is considered unacceptable.

Issued in Washington, DC on March 17, 1999, under authority delegated in 49 CFR Part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 99–6885 Filed 3–17–99; 2:03 pm]

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federal register

Monday
March 22, 1999

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 129

Security Programs of Foreign Air Carriers; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

[Docket No. FAA–1998–4758; Notice No. 98–17]

RIN 2120–AG13

Security Programs of Foreign Air Carriers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The FAA announces an extension of the comment period for an additional 60 days on the Notice of Proposed Rulemaking (NPRM; No. 98–17), which was published in the **Federal Register** on November 23, 1998 (63 FR 64764). In that NPRM, the FAA invites public comments on amending the existing airplane operator security rules for foreign air carriers and foreign operators of U.S. registered aircraft. The comment period is being extended in response to requests received from the British government and Air Canada to provide additional time to review the transcript of the public meeting held on February 24, 1999, in Washington, DC. The extension of the comment period also is being granted in response to comments made at the public meeting by commenters who requested additional time to prepare cost estimates for the NPRM.

DATES: Comments must be received on or before May 24, 1999.

ADDRESSES: Comments on Notice 98–17 should be submitted in duplicate to: U.S. Department of Transportation Dockets, Docket No. FAA–1998–4758, 400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following internet address: 9-NPRM-CMTS@faa.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

Comments that include or reference national security information or sensitive security information should not be submitted to the public docket. These comments should be sent to the following address in a manner consistent with applicable requirements and procedures for safeguarding sensitive security information (questions on these procedures may be directed to Moira A. Lozada, see **FOR FURTHER INFORMATION CONTACT**) Federal Aviation Administration, Office of the Civil Aviation Security Operations, Attention: FAA Security Control Point, Docket No. FAA–1998–4758, 800 Independence Avenue, SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Moira A. Lozada, Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division (ACP–100), Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone (202) 267–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the rulemaking proposed in Notice 98–17 by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates.

Comments should identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket (see **ADDRESSES**). All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this document may be changed in response to comments received. Comments received on this proposal will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. However, the Assistant Administrator has determined that air carrier security programs required by parts 108 and 129 contain sensitive security information. As such, the availability of information pertaining to airport security programs is governed by 14 CFR Part 191 (Withholding Security Information from Disclosure Under the Air Transportation Security Act of 1974).

A report summarizing each substantive pubic contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to the Docket No. FAA–1998–4758.'' The postcard will be date-stamped and mailed to the commenter.

Persons interested in obtaining a copy of the Security Programs of Foreign Air Carriers proposed rule should contact Elizabeth Allen at the address or telephone number provided in **FOR FURTHER INFORMATION CONTACT**.

Internet users may reach the FAA's webpage at http://www.faa.gov or the Federal Register's webpage at http://www.access.gpo.gov/su__docs to access recently published rulemaking documents.

An electronic copy of these documents may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the Federal Register's electronic bulletin board service (Telephone: (202) 512–1661).

The closing date for comments on this proposal is May 24, 1999.

Background

The FAA will extend the comment period for Security Programs of Foreign Air Carriers to provide additional time for interested parties to comment on the proposal. This extension is being granted in response to requests from the international community to allow more time to review the transcript of the public meeting held on February 24, 1999, and to prepare cost estimates for the NPRM.

Extension of Comment Period

The FAA has reviewed the requests for consideration of an extended comment period for Notice 98–17 and determined that an extension would be in the public interest and that good cause exists for taking this action. Accordingly, the comment period for Notice 98–17 is extended for an additional sixty days, as identified under the caption **DATES**.

Issued in Washington, DC on March 18, 1999.

Quinten Johnson,

Acting Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 99–6919 Filed 3–17–99; 3:16 pm]

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[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.

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