1–5–99
Vol. 64 No. 2
Pages 385–730

Federal Register

Tuesday
January 5, 1999

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Contents

Federal Register

Vol. 64, No. 2

Tuesday, January 5, 1999

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 64, No. 2
Tuesday, January 5, 1999

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–113–1]

Pine Shoot Beetle; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations to add 19 counties in Indiana, Michigan, New York, Ohio, Pennsylvania, and West Virginia to the list of quarantined areas. This action is necessary to prevent the spread of the pine shoot beetle, a pest of pine products, into noninfested areas of the United States.

DATES: Interim rule effective December 29, 1998. Consideration will be given only to comments received on or before March 8, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–113–1, 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. 98–113–1. 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: Ms. Christine K. Markham, Regional Program Manager, PPQ, APHIS, 505 South Lenola Road, Suite 201, Moorestown, NJ, 08057–1549, (609) 757–5073, E-mail: christine.markham@usda.gov; or Ms. Coanne O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247, E-mail: coanne.e.o'hern@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.50 (referred to below as the regulations) impose restrictions on the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of the pine shoot beetle (PSB) into noninfested areas of the United States.

PSB is a pest of pine trees. PSB can cause damage in weak and dying trees, where reproduction and immature stages of PSB occur, and in the new growth of healthy trees. During ''maturation feeding,'' young beetles tunnel into the center of pine shoots (usually of the current year's growth), causing stunted and distorted growth in host trees. PSB is also a vector of several diseases of pine trees. Adults can fly at least one kilometer, and infested trees and pine products are often transported long distances; these factors may result in the establishment of PSB populations far from the location of the original host tree. This pest damages urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

PSB hosts include all pine species. The beetle has been found in a variety of pine species (*Pinus* spp.) in the United States. Scotch pine (*P. sylvestris*) is the preferred host of PSB. The Animal and Plant Health Inspection Service (APHIS) has determined, based on scientific data from European countries, that fir (*Abies* spp.), spruce (*Larix* spp.), and larch (*Picea* spp.) are not hosts of PSB.

Surveys recently conducted by State and Federal inspectors revealed additional areas infested with PSB in six States that were previously known to contain infested areas (IN, MI, NY, OH, PA, and WV). Copies of the surveys may be obtained by writing to either of the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

The regulations in § 301.50–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which PSB has been found by an inspector, in which the Administrator has reason to believe PSB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which PSB has been found.

In accordance with these criteria, we are designating Hancock, Howard, and Tipton Counties, IN; Chippewa, Delta, Leelanau, Marquette, and Schoolcraft Counties, MI; Cortland, Chemung, and Onondaga Counties, NY; Belmont, Coshocton, Morgan, Noble, and Paulding Counties, OH; Blair and Greene Counties, PA; and Tyler County, WV, as quarantined areas, and we are adding them to the list of quarantined areas provided in § 301.50–3(c).

Miscellaneous Change

We are removing paragraph (d) of § 301.50–3 from the regulations. Paragraph (d) contains a map that shows the quarantined counties listed in § 301.50–3(c). The map does not add any information to the regulations; therefore, we have decided not to recreate it each time the counties are changed.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that a situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent PSB from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget

has waived its review process required by Executive Order 12866.

We do not have enough data for a comprehensive analysis of the economic impacts of this interim rule on small entities. Therefore, as required by law (5 U.S.C. 603), we performed an Initial Regulatory Flexibility Analysis for this interim rule. We invite comments about this interim rule as it relates to small entities. In particular, we need information on the benefits or costs that small entities may incur from the implementation of this interim rule and the economic impact of those benefits or costs.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167), the Secretary of Agriculture is authorized to regulate the interstate movement of articles to prevent the spread of injurious plant pests in the United States.

The PSB regulations impose restrictions on the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of PSB into noninfested areas of the United States. This rule amends these regulations by adding 19 counties in IN, MI, NY, OH, PA, and WV to the list of quarantined areas. This action is necessary to prevent the spread of PSB, a pest of pine products, into noninfested areas of the United States.

Currently, there are approximately 223 entities in the 19 newly regulated counties that may be affected by the quarantine. Of those, 82 are Christmas tree growers, 85 are tree nurseries, and 28 are commercial timber companies or commercial sawmills. Approximately 212 of the 223 entities are considered small. The following table shows these entities by type and state.

DISTRIBUTION OF AFFECTED ENTITIES IN 19 COUNTIES TO BE ADDED TO THE QUARANTINED AREA FOR PINE SHOOT BEETLE

Entities	State						Total
	NY	PA	IN	MI	OH	WV	
Christmas tree farms	14	3	3	46	16	0	82
Tree nurseries	15	2	1	45	22	0	85
Commercial timber companies or commercial sawmills	12	5	0	7	4	0	28
Other types	0	23	2	0	0	3	28
Total entities	41	33	6	98	42	3	223
Small entities	41	25	6	95	42	3	212

The Small Business Administration (SBA) defines tree nurseries with annual sales of less than $150,000 as small entities. Most tree nurseries specialize in production of deciduous landscape products, but some also produce pine nursery stock and some produce rooted pine Christmas trees. For most of the tree nurseries that produce pine nursery stock and rooted pine Christmas trees, these commodities comprise a minor share of their products or they service largely local populations within the quarantined area. Therefore, we do not expect that they will be notably affected by this rule.

The SBA defines Christmas tree farms with annual sales of less than $500,000 as small entities. Most of the Christmas tree farms in the newly regulated counties are small entities. Of the 82 Christmas tree farms that are in the newly regulated counties, most sell locally to choose-and-cut markets. Therefore, they would not be affected by this rule. Those Christmas tree farms that ship their Christmas trees and tree products outside of the quarantined area would be most affected by the quarantine. In some newly quarantined areas, up to 5 percent of the Christmas trees are sold through the wholesale market. Christmas tree farms in the newly quarantined areas in Michigan, New York, and Ohio shipped 6 percent, 12 percent, and 10 percent, respectively, of their Christmas trees and tree products to markets outside the quarantined areas in 1997. In Pennsylvania, Christmas tree farms in the newly quarantined counties shipped all of their Christmas trees and tree products outside the quarantined area in 1997. Therefore, the Christmas tree farms in the newly quarantined counties in Pennsylvania will be most affected by the quarantine.

Affected businesses can maintain markets outside the regulated areas by arranging for inspections and the issuance of certificates or limited permits or by fumigating or cold treating the regulated articles. Inspection is provided at no cost during normal business hours. However, there may be imputed costs to the businesses in preparing for the inspections and possible marketing delays. Such costs and inconveniences may be more likely for producers of live pine nursery stock, since inspection is required of each live plant before it may be moved to a nonregulated area. For producers in these counties who already have their trees inspected for other pests, another inspection may be a relatively small burden, especially when compared to the societal benefits of minimizing the human-assisted movement of PSB.

The alternative to this interim rule was to make no changes in the regulations. After consideration, we rejected this alternative because the quarantine of the 19 counties listed in this document is necessary to prevent the artificial spread of PSB.

This interim rule contains no reporting or recordkeeping requirements.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the treatment of pine products from these 19 newly regulated counties will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection 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 copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to either of the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 301.50–3 is amended as follows:

a. In paragraph (c), under Indiana, Michigan, New York, Ohio, Pennsylvania, and West Virginia, by adding new counties in alphabetical order to read as set forth below.

b. By removing paragraph (d).

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

INDIANA

* * * * *

Hancock County. The entire county.
Howard County. The entire county.

* * * * *

Tipton County. The entire county.

* * * * *

MICHIGAN

* * * * *

Chippewa County. The entire county.

* * * * *

Delta County. The entire county.

* * * * *

Leelanau County. The entire county.

* * * * *

Marquette County. The entire county.

* * * * *

Schoolcraft County. The entire county.

* * * * *

NEW YORK

* * * * *

Chemung County. The entire county.
Cortland County. The entire county.

* * * * *

Onondaga County. The entire county.

* * * * *

OHIO

* * * * *

Belmont County. The entire county.

* * * * *

Coshocton County. The entire county.

* * * * *

Morgan County. The entire county.

* * * * *

Noble County. The entire county.

* * * * *

Paulding County. The entire county.

* * * * *

PENNSYLVANIA

* * * * *

Blair County. The entire county.

* * * * *

Greene County. The entire county.

* * * * *

WEST VIRGINIA

* * * * *

Tyler County. The entire county.

* * * * *

Done in Washington, DC, this 29th day of December 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–112 Filed 1–4–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV98–930–1 FR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 1998–99 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes final free and restricted percentages for the 1998–99 crop year. The percentages are 60 percent free and 40 percent restricted. The percentages establish the proportion of cherries from the 1998 crop which may be handled in normal commercial outlets and are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body which locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

EFFECTIVE DATE: January 6, 1999 through June 30, 1999, and applies to all tart cherries handled from the beginning of the 1998–99 crop year.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 205–6632, or E-mail: Jay__—N__ Guerber@usda.gov. You may also view the marketing agreements and orders small business compliance guide at the following website: http://www.ams.usda.gov/f.v./moab.html.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of

Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule establishes final free and restricted percentages for tart cherries for the 1998–99 crop year, beginning July 1, 1998, through June 30, 1999. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with section 930.59 of the order and section 930.159 of the regulations, or used for exempt purposes (and obtaining diversion credit) under section 930.62 of the order and section 930.162 of the regulations. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District three—Southwest Michigan; District four—New York; and District seven—Utah. Districts five, six, eight and nine (Oregon, Pennsylvania, Washington, and Wisconsin, respectively) would not be regulated for the 1998–99 season.

The order prescribes under section 930.52 that upon adoption of the order, those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded 15 million pounds. A district not meeting the 15 million pound requirement shall not be regulated in such crop year. Therefore, for this season, handlers in the districts of Oregon, Pennsylvania, Washington, and Wisconsin would not be subject to volume regulation. They were also not subject to volume regulation during the last season.

Section 930.50(a) of the order describes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and dividing that figure by the current year's USDA crop forecast. The carryin inventory figure reflects the amount of cherries that handlers actually have in inventory. If the resulting quotient is 100 percent or more, the Board should establish a preliminary free market tonnage percentage of 100 percent. If the quotient is less than 100 percent, the Board should establish a preliminary free market tonnage percentage equivalent to the quotient, rounded to the nearest whole percent, with the complement being the preliminary restricted percentage.

The Board met on June 18–19, 1998, and computed, for the 1998–99 crop year, an optimum supply of 287.4 million pounds. The Board recommended that the carryout figure be zero pounds. Carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds. The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop was 292.5 million pounds; a 46 million pound carryin added to that equaled a total available supply of 338.5 million pounds. The carryin figure reflects the amount of cherries that handlers actually have in inventory. The optimum supply was subtracted from the total estimated available supply resulting in a surplus of 51.1 million pounds of tart cherries. An adjustment for changed economic conditions of 37.0 million pounds was added to the surplus, pursuant to section 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 88.1 million pounds of tart cherries. The total surplus 88.1 million pounds is a correction to a proposed rule published November 18, 1998 (63 FR 64008) which incorrectly stated the resulting total surplus for 1998–99 at 125.1 million pounds. The surplus was divided by the production in the regulated districts (258 million pounds) and resulted in 66 percent free and 34 percent restricted for the 1998–99 crop year. The Board recommended these percentages by a 15 to 2 vote, with one abstention. Those Board members voting against the recommendation disagreed with the computation of the carryin figure because they thought that the figure should also include the amount in the inventory reserve. Record evidence received during the promulgation of the order indicated that the carryin figure reflects the amount of cherries that handlers actually have in inventory (not in the primary or secondary reserve). The Board recommended the percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information for the 1998–99 crop year:

	Millions of pounds
Optimum Supply Formula	
(1) Average sales of the prior three years	287.4
(2) Less carryout	0
(3) Optimum Supply calculated by the Board at the June meeting	287.4
Preliminary Percentages	
(4) Less carryin as of July 1, 1998	46.0
(5) Tonnage requirement for current crop year	241.4
(6) USDA crop estimate	292.5
(7) Surplus (item 6 minus item 5)	51.1
(8) Economic adjustment to surplus	37.0
(9) Adjusted surplus (item 7 plus item 8)	88.1
(10) USDA crop estimate for regulated districts	258.0

Percentages	Free	Restricted
(11) Preliminary percentages (item 9 divided by item 10) × 100	66	34

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry.

Section 930.50(d) of the order requires the Board to meet no later than September 15 to recommend final free and restricted percentages to the Secretary for approval. The Board met on September 10–11, 1998, and recommended final free and restricted percentages of 60 and 40, respectively. The Board recommended that the interim percentages and final percentages be the same percentages. At that time, the Board had available actual production amounts to review and made the necessary adjustments to the percentages.

The Secretary establishes final free and restricted percentages through an informal rulemaking process. These percentages would make available the tart cherries necessary to achieve the optimum supply figure calculated earlier by the industry. The difference between any final free market tonnage percentage designated by the Secretary and 100 percent is the final restricted percentage.

The Board used a revised optimum supply figure for its final free and restricted percentage calculations. The figure is 288.6 million pounds instead of the 287.4 million pound figure used in June. This is because the 3-year average sales figure used at the June meeting by necessity required an estimate of June 1998 sales. The 3-year average sales figure used in the final calculations reflects actual sales through the 1997–98 crop year.

The optimum supply, therefore is 288.6 million pounds. The actual production recorded by the Board was 339.9 million pounds, which is a 47.4 million pound increase from the USDA crop estimate of 292.5 million pounds. The increase in the crop is due to very favorable growing conditions in portions of the State of Michigan this season. For the current crop year, 305.3 million pounds of tart cherries were produced in the regulated districts.

A 38.8 million pound carryin (actual carryin as opposed to the 46 million pounds originally estimated) was subtracted from the optimum supply of 288.6 million pounds, which yields a tonnage requirement for the current crop year of 249.8 million pounds. Subtracted from the actual production in all districts of 339.9 million pounds reported by the Board is the tonnage required for the current crop year (249.8 million pounds) which results in a 90.1 million pound surplus. An adjustment for changed economic conditions of 31.4 million pounds was added to the surplus, pursuant to section 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 121.5 million pounds of tart cherries. The total surplus of 121.5 million pounds is divided by the 305.3 million pound volume of tart cherries produced in the regulated districts. This results in a 40 percent restricted percentage and a corresponding 60 percent free percentage for the regulated districts.

The final percentages are based on the Board's reported production figures and the following supply and demand information for the 1998–99 crop year:

	Millions of pounds
Optimum Supply Formula	
(1) Average sales of the prior three years	288.6
(2) Less carryout	0
(3) Optimum Supply calculated by the Board at the September meeting	288.6
Final Percentages	
(4) Less carryin as of July 1, 1998	38.8
(5) Tonnage required current crop year	249.8
(6) Board reported production	339.9
(7) Surplus (item 6 minus item 5)	90.1
(8) Economic adjustment to surplus	31.4
(9) Adjusted surplus (item 7 plus item 8)	121.5
(10) Production in regulated districts	305.3

Percentages	Free	Restricted
(11) Final Percentages (item 9 divided by item 10) × 100	60	40

As previously mentioned, the Board recommended an economic adjustment be made in computing both the preliminary and final percentages for the 1998–99 crop year. This is authorized under section 930.50. These subsections provide that in its deliberations of volume regulation recommendations, the Board consider, among other things, the expected demand conditions for cherries in different market segments and an analysis of economic factors having bearing on the marketing cherries. Based on these considerations, the Board may modify its marketing policy calculations to reflect changes in economic conditions.

The order provides that the 3-year average of all sales be used in determining the optimum supply of cherries. In recent seasons, however, sales to export markets have risen dramatically. In 1997, export sales of 61.1 million pounds were 379 percent of 1994 sales (16.1 million pounds). The increase in export sales to those destinations exempt from volume regulation (countries other than Canada, Japan, and Mexico) was even greater, rising from 12.2 million pounds to 48.7 million pounds. Export sales to countries other than Canada, Japan and Mexico were exempt from volume regulations as a way for the tart cherry industry to find and expand new markets for their products. Including this volume of sales in the optimum supply formula, however, results in an overestimate of the volume of tart cherries that can be profitably marketed in unrestricted markets. Thus, the Board recommended adjusting its estimate of surplus cherries by adding exempt export sales.

By recommending this marketing policy modification, the Board believes that it will provide stability to the marketplace and the industry will be in a better situation for future years since new markets will have been developed. Board members were of the opinion that, if this adjustment is not made, growers could be paid less than their production costs, because handlers would suffer financial losses that would probably be passed on. Handlers would have to meet their reserve obligations by other means. In addition, the value of cherries already in inventory could be depressed due to the overabundant supply of available cherries, a result inconsistent with the intent of the order and the Act.

The Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal would be met by the establishment of a preliminary percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under section 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release shall be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive during the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 29 million pounds would be made available to handlers this season in accordance with Department Guidelines. This release would be made available to every handler and released to such handler in proportion to its percentage of the total regulated crop handled. If such handler does not take such handler's proportionate amount, such amount shall remain in the inventory reserve.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

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

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 1,400 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Board and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons—who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced and pureed. During the period 1993/94 through 1997/98, approximately 89 percent of the U.S. tart cherry crop, or 281.1 million pounds, was processed annually. Of the 281.1 million pounds of tart cherries processed, 63 percent was frozen, 25 percent canned and 4 percent utilized for juice. The remaining 8 percent was dried or assembled into juice packs.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987/88 through 1997/98, tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1997/98, approximately 88 percent of domestic tart cherry acreage is located in four States: Michigan, New York, Utah and

Wisconsin. Michigan leads the nation in tart cherry acreage with 67 percent of the total. Michigan produces about 78 percent of the U.S. tart cherry crop each year. In 1997/98, tart cherry acreage in Michigan decreased to 26,800 from 27,300 in the previous year.

In crop years 1987/88 through 1997/98, tart cherry production ranged from a high of 359 million pounds in 1987/88 to a low of 189.9 million pounds in 1991/92. The price per pound to tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuation in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices which they received often did not come close to covering the costs of production. They also testified that production costs for most growers range between 20 and 22 cents per pound, which is well above average prices received during 1993–1995.

The industry has demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

In discussing the possibility of marketing percentages for the 1998–99 crop year, the Board considered the following factors contained in the marketing policy: (1) the estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in June 1998 of preliminary free and restricted percentages and in the final and free and restricted percentages established in this rule (60 percent free and 40 percent restricted).

The Board discussed the demand for tart cherries is inelastic at high and low levels of production. At the extremes, different factors become operational. The order's promulgation record stated that in very short crops there is limited but sufficient exclusive demand for cherries that can cause processor prices to double and grower prices to triple. In the event of large crops, there seems to be no price low enough to expand tart cherry sales in the marketplace sufficient to market the crops.

In considering alternatives, the Board discussed not having volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry. Returns to growers would not even cover their production costs for this season.

The Board discussed the fact that the general quality of the crop for this season is fair to good. Alternative products used by food processing and preparation establishments instead of cherries are apples and blueberries which can be substituted for cherries if cherries cannot be sold at consistent prices.

As mentioned earlier, the Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages proposed to be established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements have been previously approved by OMB and assigned OMB Number 0581–0177.

There are some reporting, recordkeeping and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

A proposed rule concerning this action was published in the **Federal Register** on Wednesday, November 18, 1998 (63 FR 64008). Copies of the rule were also mailed or sent via facsimile to all Board members and cherry handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register.

A 15-day comment period was provided to allow interested persons to respond to the proposal. Fifteen days was deemed appropriate because a rule finalizing the action would need to be in place as soon as possible since handlers are currently marketing 1998–99 cherries. No comments were received during the comment period.

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

It is further found that good cause exists for not postponing the effective

date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping cherries from the 1997–98 crop and need to know the final percentages as soon as possible. Further, handlers are aware of this rule, which was recommended in a public meeting. Also, a 15-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR Part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.251 is added to Subpart—Supplementary Regulations to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 930.251 Final free and restricted percentages for the 1998–99 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 1998, which shall be free and restricted, respectively, are designated as follows: Free percentage, 60 percent and restricted percentage, 40 percent.

Dated: December 28, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–33 Filed 1–4–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 1951

RIN 0560–AF59

Disaster Set-Aside Program—Second Installment Set-Aside

AGENCY: Farm Service Agency, USDA.

ACTION: Interim rule.

SUMMARY: The Farm Service Agency (FSA) is amending the disaster set-aside program requirement to allow farm borrowers to set aside portions of payments that could not be made as scheduled due to a natural disaster as declared by the President or Secretary of Agriculture during 1998, or because of low commodity prices during 1998. Applications for set-aside due to 1998 low commodity prices must be received on or before August 31, 1999. Borrowers who have loans with set-aside payments as of the publication date of this regulation may set aside a second payment on the same loans if determined eligible based on criteria established by this rule. To receive consideration for a second set-aside due to a natural disaster, the borrower's request must be received within 8 months from the date of the disaster designation, in accordance with 7 CFR part 1945, subpart A. The impact of these provisions will allow the agency to serve farmers who have experienced losses due to a natural disaster or low commodity prices during 1998 in an efficient and timely manner while helping them stay in business.

EFFECTIVE DATE: The effective date for this rule is January 5, 1999. Comments on this rule and on the information collections must be submitted by March 8, 1999 to be assured consideration.

ADDRESSES: Submit written comments to Director, Farm Loan Programs, Loan Servicing and Property Management Division, United States Department of Agriculture, Farm Service Agency, STOP 0523, 1400 Independence Avenue, SW, Washington, DC 20250–0523.

FOR FURTHER INFORMATION CONTACT: David Spillman, Branch Chief, United States Department of Agriculture, Farm Service Agency, Farm Loan Programs, Loan Servicing and Property Management Division, 1400 Independence Avenue, SW, STOP 0523, Washington, D.C. 20250–0523; telephone (202) 720–0900; electronic mail: david__spillman@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Thus, large entities are subject to these rules to the same extent as small entities. Therefore, a regulatory flexibility analysis was not performed.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' The issuing agency has determined that this action does not affect the quality of human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and 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 in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule.

Executive Order 12372

For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs within this rule are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with State and local officials.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA requires FSA to prepare a written statement, including a cost benefit assessment, for proposed and final rules with ''Federal mandates'' that may result in such expenditures for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act of 1995

Approval of information collections requirements associated with this regulation expired on August 31, 1998. A notice of request for extension of currently approved information collections was published on May 5, 1998. FSA has submitted a request for emergency reinstatement of the information collections. Estimates for information collections have been modified from those published on May 5, 1998, to reflect an increase in requests which will be a result of the changes made by this rule. Therefore, the agency is again seeking public comments on the information collection estimates.

Abstract

The FSA is authorized by the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1921 *et seq.*), or other Acts, and the regulations promulgated thereunder, to solicit the information requested on this paperwork burden. The information requested is necessary for FSA to determine eligibility for credit or other financial assistance and service borrower's loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 31 minutes per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated number of respondents: 16,300.

Estimated number of responses per respondent: 3.9.

Estimated total annual burden on respondents: 33,399 hours.

The Agency is soliciting comments on the burden of all of the above subparts regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of 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. These comments should be sent to Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to David Spillman, Branch Chief, USDA, FSA, Farm Loan Programs, Loan Servicing Division, 1400 Independence Avenue, SW., Stop 0523, Washington, DC 20250–0523. Copies of the information collections may be obtained from Mr. Spillman at the above address. All comments will become a matter of public record.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance.

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans

Discussion of the Interim Rule

The Farm Service Agency (FSA) publishes this amendment to subpart T of part 1951 without prior notice and comment because of the emergency nature of the program and the eligibility requirements involved. Publication as a proposed rule for notice and comment is impractical and contrary to the public interest as discussed below.

The Disaster Set-Aside (DSA) program was first made available to FSA Farm Loan Programs (FLP) borrowers beginning October 21, 1994, because of the heavy flooding in the Midwest and extreme drought in the South. Since that time approximately 15,000 borrowers have received DSA assistance. The overall success of the program can be attributed to the relatively small amount of paperwork required in applying for and processing DSA requests. DSA gives FLP borrowers a chance to recover from their losses without having to incur additional debt to pay creditors or liquidate essential assets. The cost to the Government is substantially less under this servicing program than any other, as no debt is written off, no appraisal costs are incurred as under subpart S of part 1951, and no liquidation costs are incurred.

Many borrowers have received a previous writedown of debt under subpart S of part 1951, thereby making them ineligible for additional debt forgiveness and farm loans, in certain cases, under § 373 of the Consolidated Farm and Rural Development Act. The expansion of the program to permit a second debt set-aside or a set-aside due to 1998 declared disasters or low commodity prices, therefore, is needed immediately to prevent irreparable financial harm to those adversely affected, an estimated 11,424, farmers. While there is justification for the rule to become effective immediately after publication, FSA will accept public comments on the rule for 60 days for consideration when the rule is made final.

7 CFR 1951.954, generally provides that each loan can only have one set-aside installment outstanding. A borrower could receive DSA again only if the existing set-aside installment were paid in full, or canceled through restructuring under subpart S of part 1951. This rule will allow borrowers who were affected by low commodity prices in 1998, or by a natural disaster in a county declared a major disaster by the President or Secretary during 1998, to have a second installment set aside without the first set-aside installment being paid in full or canceled. Borrowers who farmed in counties contiguous to the disaster area also may be eligible for the second installment set-aside.

This rule will allow such borrowers to receive immediate financial relief from their FLP obligations in a more expedient manner than under subpart S of part 1951. When the borrower pays any portion of the set-aside installments in the future, the payment will be applied to the oldest installment set-aside.

Applications from borrowers affected by low commodity prices during 1998 must be received by August 31, 1999. Borrowers affected by a natural disaster declared by the President or Secretary during 1998 must apply within 8 months of the designation.

List of Subjects in 7 CFR Part 1951

Accounting, Credit, Disaster assistance, Loan programs-agriculture, Loan programs-housing and community development, Low and moderate income housing.

Accordingly, 7 CFR part 1951 is amended as follows:

PART 1951–SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart T—Disaster Set-Aside Program

2. Section 1951.951 is amended by revising the second sentence to read as follows:

§ 1951.951 Purpose.

* * * The DSA program is available to Farm Loan Program (FLP) borrowers, as defined in subpart S of this part, who suffered losses as a result of a natural disaster or low commodity prices in specified years. * * *

3. Section 1951.952 is amended by revising the first and second sentences to read as follows:

§ 1951.952 General.

DSA is a program whereby borrowers who are current or not more than one installment behind on any and all FLP loans may be permitted to move the scheduled annual installment for each eligible FLP loan to the end of the loan term. The intent of this program is to relieve some of the borrower's immediate financial stress caused by the disaster or low commodity prices that occurred in specified years and avoid foreclosure by the Government. * * *

4. Section 1951.953 is amended by revising paragraph (b) to read as follows:

§ 1951.953 Notification and request for DSA.

* * * * *

(b) *Deadline to apply.* All FLP borrowers liable for the debt must request a DSA within 8 months from the date the disaster was designated, in accordance with 7 CFR part 1945, subpart A. Applications for set-aside or second installment set-aside due to low commodity prices in 1998 must be received on or before August 31, 1999.

* * * * *

5. Section 1951.954 is amended by revising paragraphs (a)(1), (a)(5), (a)(7), (b)(2), (b)(4), and (b)(5) to read as follows:

§ 1951.954 Eligibility and loan limitation requirements.

(a) * * *

(1)(i) The borrower must have operated a farm or ranch in a county designated a disaster area as contained in 7 CFR part 1945, subpart A, or a county contiguous to such an area, and must have been a borrower and operated the farm or ranch at the time of the low commodity prices or disaster period.

(ii) If the borrower is applying for a second installment to be set aside based on a declared disaster, the borrower must have operated in a county declared a major disaster by the President or the Secretary during 1998. Borrowers who farmed in a county contiguous to a county that was declared a disaster area also may be eligible for a second installment set-aside.

(iii) All FLP borrowers may apply for an installment to be set aside based on low commodity prices during 1998. County location, or proximity to a disaster declared county is not a consideration when the DSA is justified by low commodity prices.

(iv) A borrower cannot have more than two installments set aside on any loan.

* * * * *

(5) As a direct result of the declared disaster or the 1998 low commodity prices, sufficient income was not available to pay all family living and operating expenses, debts to other creditors, and FSA. This determination will be based on the borrower's actual production, income and expense records for the disaster or affected year and any other records required by the servicing official. Compensation received for losses shall be considered as well as increased expenses incurred because of a disaster. Consideration will also be given to insufficient income for the next production and marketing period following the affected year if the borrower establishes that production will be reduced or expenses increased as a result of the disaster or the 1998 low commodity prices.

* * * * *

(7) The borrower's FLP loan has not been accelerated nor has the borrower's debt been restructured under subpart S of this part since the disaster or the low commodity prices occurred.

(b) * * *

(2)(i) Except as provided in paragraph (b)(2)(ii), only one unpaid installment for each FLP loan may be set-aside. If there is an installment remaining set-aside from a previous disaster, the loan is not eligible for another DSA.

(ii) For disaster declarations during 1998, or low commodity prices in 1998, borrowers who already have one installment set aside from a previous disaster may set aside a second installment.

(iii) If all set-asides are paid in full, or cancelled through restructuring under subpart S of this part, the set-aside will no longer exist and the loan may be considered for DSA.

* * * * *

(4) The amount of set-aside shall be limited to the amount the borrower was unable to pay FSA from the production and marketing period in which the disaster or low commodity prices occurred. However, if the installment due immediately after the disaster was paid, but other creditors and expenses were not, the amount set-aside will be the lessor of the amount the borrower is unable to pay other creditors and expenses, rounded up to the nearest whole installment, or the next FLP installment due.

(5) The installment that may be set-aside is limited to the first scheduled annual installment due immediately after the disaster or low commodity prices occurred, unless that installment is paid, then the next scheduled annual installment may be set-aside.

* * * * *

Signed in Washington, DC, on December 30, 1998.

Dallas R. Smith,

Acting Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 99–115 Filed 1–4–99; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 98–014–3]

Brucellosis in Cattle; State and Area Classifications; Florida

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Florida from Class Free to Class A. We have determined that Florida no longer meets the standards for Class Free status. The interim rule was necessary to impose certain restrictions on the interstate movement of cattle from Florida.

EFFECTIVE DATE: The interim rule was effective on August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. R.T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–7709; or e-mail: reed.t.rollo@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective on August 13, 1998, and published in the **Federal Register** on August 20, 1998 (63 FR 44544–44545, Docket No. 98–014–2), we amended the brucellosis regulations in 9 CFR part 78 by removing Florida from the list of Class Free States or areas in § 78.41(a) and adding it to the list of Class A States or areas in § 78.41(b).

Comments on the interim rule were required to be received on or before October 19, 1998. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim

rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 63 FR 44544–44545 on August 20, 1998.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 29th day of December 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–114 Filed 1–4–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–54–AD; Amendment 39–10821; AD 98–08–25 R1]

RIN 2120–AA64

Airworthiness Directives; Twin Commander Aircraft Corporation 500, 680, 690, and 695 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of Airworthiness Directive (AD) 98–08–25 R1, which applies to certain Twin Commander Aircraft Corporation (Twin Commander) 500, 680, 690, and 695 series airplanes. AD 98–08–25 R1 requires replacing the nose landing gear (NLG) drag link bolt with an approved heat-treated bolt that has the manufacturer's serial number, manufacture date, and the last three digits of the drawing number (055) on the bolt head; and changing the bolt part number (P/N) to be installed on Models 690D and 695A from P/N ED10055 to P/N 750076–1. This AD was the result of the FAA inadvertently transposing the serial numbers of the 4 affected Model 695A airplanes. The actions specified in this AD are intended to prevent the NLG from collapsing due to failure of a drag link bolt, which could result in loss of control of the airplane during landing operations.

EFFECTIVE DATE: January 5, 1999.

FOR FURTHER INFORMATION CONTACT: Jeffrey Morfitt, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Ave. S.W., Renton, Washington, 98055–4056; telephone: (206) 227–2595; facsimile: (206) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with request for comments in the **Federal Register** on October 9, 1998 (63 FR 54347). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA anticipates that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received within the comment period, the regulation would become effective on January 5, 1999. No adverse comments were received, and thus this notice confirms that this final rule becomes effective on that date.

Issued in Kansas City, Missouri, on December 29, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–45 Filed 1–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–40–AD; Amendment 39–10681; AD 98–11–01 R2]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 98–11–01 R2, which was published in the **Federal Register** on July 31, 1998 (63 FR 40807), and concerns Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. Certain references to the AD number and amendment number in the document are incorrect. The AD currently requires replacing the fuel tank vent valves and drilling a 4.8 millimeter (0.1875 inch) hole in each fuel filler cap on certain Pilatus Models PC–12 and PC–12/45 airplanes. AD 98–11–01 R2 also requires inserting a temporary revision in the Pilot's Operating Handbook (POH) that specifies checking to assure that the fuel filler cap hole is clear of ice and foreign objects. This action corrects the AD to reflect the correct reference to the AD number and amendment number throughout the entire document.

EFFECTIVE DATE: September 22, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Discussion

On July 23, 1998, the FAA issued AD 98–11–01 R2, Amendment 39–10681 (63 FR 40807, July 31, 1998), which applies to certain Pilatus Models PC–12 and PC–12/45 airplanes. This AD requires replacing the fuel tank vent valves and drilling a 4.8 millimeter (0.1875 inch) hole in each fuel filler cap on certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. AD 98–11–01 R2 also requires inserting a temporary revision in the Pilot's Operating Handbook (POH) that specifies checking to assure that the fuel filler cap hole is clear of ice and foreign objects.

Need for the Correction

Certain references to the AD number and amendment number in the document are incorrect. As written, owners/operators of the affected airplanes, may enter the incorrect AD number and amendment number into their logbook when showing compliance with the AD.

Correction of Publication

Accordingly, the publication of July 31, 1998 (63 FR 40807), of Amendment 39–10681; AD 98–11–01 R2, which was the subject of FR Doc. 98–20439, is corrected as follows:

§ 39.13 [Corrected]

On page 40808, in the third column, section 39.13, the third line, correct ''98–11–01 R1'' to ''98–11–01 R2''.

On page 40808, in the third column, section 39.13, the ninth line, correct ''Amendment 39–34565'', to ''Amendment 39–10192.''

Action is taken herein to correct this reference in AD 98–11–01 R2 and to add this AD correction to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains September 22, 1998.

Issued in Kansas City, Missouri, on December 29, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–43 Filed 1–4–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 2, 3, 5, 10, 12, 16, 20, 25, 50, 54, 56, 58, 60, 70, 71, 200, 201, 202, 206, 207, 210, 211, 299, 300, 310, 312, 314, 316, 320, 333, 369, 510, 514, 520, 522, 524, 529, 800, 801, 807, 809, 812, and 860

[Docket No. 98N–0720]

Conforming Regulations Regarding Removal of Section 507 of the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to remove references to the repealed statutory provision of the Federal Food, Drug, and Cosmetic Act (the act) under which the agency certified antibiotic drugs. FDA is also removing references to the repealed antibiotic monograph regulations and to those regulations dealing with antibiotic applications. The agency is taking this action in accordance with provisions of the Food and Drug Administration Modernization Act of 1997 (FDAMA). Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule, under FDA's usual procedures for notice and comment, to provide a procedural framework to finalize the rule in the event the agency receives any significant adverse comment and withdraws the direct final rule.

DATES: This rule is effective May 20, 1999. Submit written comments on or before March 22, 1999. If no timely significant adverse comments are received, the agency will publish a document in the **Federal Register** before April 20, 1999, confirming the effective date of the direct final rule. The agency intends to make the direct final rule effective 30 days after publication of the confirmation document in the **Federal Register**. If timely significant adverse comments are received, the agency will publish a document of significant adverse comment in the **Federal Register** withdrawing this direct final rule before April 20, 1999.

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

FOR FURTHER INFORMATION CONTACT:

For human drugs, Christine F. Rogers or Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

For animal drugs, Richard L. Arkin, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0141.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1997, the President signed FDAMA (Pub. L. 105–115). Section 125(b) of FDAMA repealed section 507 of the act (21 U.S.C. 357). Section 507 of the act was the statutory provision under which the agency certified antibiotic drugs. Section 125(b) of FDAMA also made conforming amendments to other sections of the act. With the repeal of section 507 of the act, antibiotic drugs previously regulated under section 507 will be subject to the provisions of section 505 of the act (21 U.S.C. 355).

FDA has determined that it will be most efficient to make changes in its regulations to reflect the repeal of section 507 of the act in phases. In the first phase, FDA published in the **Federal Register** of May 12, 1998 (63 FR 26066), a direct final rule removing parts 430 through 460 (21 CFR parts 430 through 460), which had provided the procedures and standards used to certify antibiotic drugs. This direct final rule is the second phase of rulemaking in which the agency is making various, noncontroversial conforming amendments to the balance of Title 21 of the Code of Federal Regulations. The rule removes citations to section 507 of the act. It removes references to the certification of antibiotics, to the antibiotic certification regulations, and to specific antibiotic monographs. It also removes references to antibiotic drug applications, abbreviated antibiotic drug applications, and supplemental drug antibiotic applications.

The agency recognizes that as it implements the transition from regulating the premarket review and approval of antibiotic drugs under section 507 of the act to section 505 of the act, other issues may arise that could require additional rulemaking. These issues will be addressed in the third phase of implementation.

II. Direct Final Rulemaking

FDA has determined that the subject of this rulemaking is suitable for a direct final rule. The repeal of section 507 of the act eliminates the statutory provision on which the agency relied to certify antibiotic drugs. FDA will, therefore, remove all provisions of Title 21 of the Code of Federal Regulations that were issued primarily to carry out the agency's certification of antibiotic drugs under former section 507 of the act. All direct references to section 507 of the act will be removed, as well as all references to regulations that were issued to carry out programs under section 507 and all references to forms and applications that were unique to the regulation of antibiotics under section 507. The actions taken should be noncontroversial, and the agency does not anticipate receiving any significant adverse comments on this rule.

If FDA does not receive significant adverse comment on or before March 22, 1999, the agency will publish a document in the **Federal Register** before April 20, 1999, confirming the effective date of the direct final rule. The agency intends to make the direct final rule effective 30 days after publication of the confirmation document in the **Federal Register**. A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment unless the comment states why this rule would be ineffective without the additional change. If timely significant adverse comments are received, the agency will publish a document of significant adverse comment in the **Federal Register** withdrawing this direct final rule before April 20, 1999.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule, which is identical to the direct final rule, that provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn

because of significant adverse comment. The comment period for the direct final rule runs concurrently with that of the companion proposed rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. Likewise, significant adverse comments submitted to the direct final rule will be considered as comments to the companion proposed rule and the agency will consider such comments in developing a final rule. FDA will not provide additional opportunity for comment on the companion proposed rule.

If a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision may be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not the subject of a significant adverse comment. A full description of FDA's policy on direct final rule procedures may be found in a guidance document published in the **Federal Register** of November 21, 1997 (62 FR 62466).

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a class of actions that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the direct final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. As discussed in this section of this document, the agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the direct final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires that if a rule has a significant impact on a substantial number of small entities, the agency must analyze regulatory options to minimize the economic impact on small entities. The agency certifies, for the reasons discussed below, that the direct final rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The Unfunded Mandates Reform Act requires an agency to prepare a budgetary impact statement before issuing any rule likely to result in a Federal mandate that may result in expenditures by State, local, and tribal governments or the private sector of $100 million (adjusted annually for inflation) in any 1 year. These conforming amendments will not result in any increased expenditures by State, local, and tribal governments or the private sector. Because this rule will not result in an expenditure of $100 million or more on any governmental entity or the private sector, no budgetary impact statement is required.

This rule is intended to make conforming changes to FDA's regulations necessitated by repeal of the section 507 of the act that had provided for the certification of antibiotic drugs. Accordingly, the agency believes that the rule is necessary and that it is consistent with the principles of Executive Order 12866; that it is not a significant regulatory action under that Executive Order; that it will not have a significant impact on a substantial number of small entities; and that it is not likely to result in an annual expenditure in excess of $100 million.

V. Paperwork Reduction Act of 1995

This direct final rule does not require information collections and, thus, is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

VI. Request for Comments

Interested persons may, on or before March 22, 1999, submit to the Dockets Management Branch (address above) written comments regarding this rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 2

Administrative practice and procedure, Cosmetics, Drugs, Foods.

21 CFR Part 3

Administrative practice and procedure, Biologics, Drugs, Medical devices.

21 CFR Part 5

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

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Parts 12 and 16

Administrative practice and procedure.

21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

21 CFR Part 25

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

21 CFR Part 50

Human research subjects, Prisoners, Reporting and recordkeeping requirements, Safety.

21 CFR Part 54

Biologics, Drugs, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 56

Human research subjects, Reporting and recordkeeping requirements, Safety.

21 CFR Part 58

Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 60

Administrative practice and procedure, Drugs, Food additives, Inventions and patents, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 70

Color additives, Cosmetics, Drugs, Labeling, Packaging and containers.

21 CFR Part 71

Administrative practice and procedure, Color additives, Confidential business information, Cosmetics, Drugs,

Reporting and recordkeeping requirements.

21 CFR Parts 200 and 300

Drugs, Prescription drugs.

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 202

Advertising, Prescription drugs.

21 CFR Parts 206 and 299

Drugs.

21 CFR Parts 207 and 320

Drugs, Reporting and recordkeeping requirements.

21 CFR 210

Drugs, Packaging and containers.

21 CFR Part 211

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

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 316

Administrative practice and procedure, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 333

Labeling, Over-the-counter drugs.

21 CFR Part 369

Labeling, Medical devices, Over-the counter drugs.

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, 524, and 529

Animal drugs.

21 CFR Part 800

Administrative practice and procedure, Medical devices, Ophthalmic goods and services, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 807

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 809

Labeling, Medical devices.

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 860

Administrative practice and procedure, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 2, 3, 5, 10, 12, 16, 20, 25, 50, 54, 56, 58, 60, 70, 71, 200, 201, 202, 206, 207, 210, 211, 299, 300, 310, 312, 314, 316, 320, 333, 369, 510, 514, 520, 522, 524, 529, 800, 801, 807, 809, 812, and 860 are amended as follows:

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

1. The authority citation for 21 CFR part 2 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 335, 342, 346a, 348, 351, 352, 355, 360b, 361, 371, 372, 374; 15 U.S.C. 402, 409.

PART 3—PRODUCT JURISDICTION

2. The authority citation for 21 CFR part 3 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 360gg–360ss, 371(a), 379e, 381, 394; 42 U.S.C. 216, 262.

§ 3.2 [Amended]

3. Section 3.2 *Definitions* is amended in paragraph (k) by removing ''507,'' and ''antibiotic application,''.

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

4. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 61–63, 141–149, 321–394, 467f, 679(b), 801–886, 1031–1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1; 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223.

§ 5.31 [Amended]

5. Section 5.31 *Petitions under part 10* is amended by removing and reserving paragraphs (f)(2)(v), (f)(2)(vi), and (f)(2)(vii).

§ 5.70 [Amended]

6. Section 5.70 *Issuance of notice implementing the provisions of the Drug Amendments of 1962* is amended by removing ''sections 505 and 507'' and adding in its place ''section 505''.

§ 5.75 [Removed]

7. Section 5.75 *Designation of official master and working standards for antibiotic drugs* is removed.

§ 5.76 [Removed]

8. Section 5.76 *Certification of antibiotic drugs* is removed.

§ 5.78 [Removed]

9. Section 5.78 *Issuance, amendment, or repeal of regulations pertaining to antibiotic drugs* is removed.

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

10. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

§ 10.50 [Amended]

11. Section 10.50 *Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing* is amended by removing ''314.300,'' from paragraph (a)(2) and by removing and reserving paragraph (c)(11).

§ 10.55 [Amended]

12. Section 10.55 *Separation of functions; ex parte communications* is amended in paragraph (c) by removing ''314.300,'' from the first sentence.

§ 10.80 [Amended]

13. Section 10.80 *Dissemination of draft Federal Register notices and regulations* is amended in paragraph (g) by removing the phrase ''or a proposed or final antibiotic regulation''.

PART 12—FORMAL EVIDENTIARY PUBLIC HEARING

14. The authority citation for 21 CFR part 12 is revised to read as follows:

Authority: 21 U.S.C. 141–149, 321–393, 467f, 679, 821, 1034; 42 U.S.C. 201, 262, 263b–263n, 264; 15 U.S.C. 1451–1461; 5 U.S.C. 551–558, 701–721; 28 U.S.C. 2112.

§ 12.20 [Amended]

15. Section 12.20 *Initiation of a hearing involving the issuance, amendment, or revocation of a regulation* is amended by removing ''507(f),'' from the introductory text of paragraph (a), by removing the phrase ''or for an antibiotic petition in § 431.50'' from paragraph (a)(2)(i), and by removing and reserving paragraph (c).

§ 12.24 [Amended]

16. Section 12.24 *Ruling on objections and requests for hearing* is amended by removing ''314.300,'' from paragraphs (b)(6) and (c).

§ 12.87 [Amended]

17. Section 12.87 *Purpose; oral and written testimony; burden of proof* is amended by removing ''antibiotic,'' from the first sentence of paragraph (d).

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

18. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

§ 16.1 [Amended]

19. Section 16.1 *Scope* is amended by removing §§ 431.52, 433.2(d), 433.12(b)(5), 433.13(b), 433.14(b), 433.15(b), 433.16(b), and 514.210 from the list of regulatory provisions in paragraph (b)(2).

PART 20—PUBLIC INFORMATION

20. The authority citation for 21 CFR part 20 is revised to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

§ 20.100 [Amended]

21. Section 20.100 *Applicability; cross-reference to other regulations* is amended by removing and reserving paragraphs (c)(20) and (c)(21).

§ 20.117 [Amended]

22. Section 20.117 *New drug information* is amended by removing ''antibiotic applications,'' from paragraph (a)(3).

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

23. The authority citation for 21 CFR part 25 continues to read as follows:

Authority: 21 U.S.C. 321–393; 42 U.S.C. 262, 263b–264; 42 U.S.C. 4321, 4332; 40 CFR parts 1500–1508; E.O. 11514, 35 FR 4247, 3 CFR, 1971 Comp., p. 531–533, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1978 Comp., p. 123–124 and E.O. 12114, 44 FR 1957, 3 CFR, 1980 Comp., p. 356–360.

§ 25.5 [Amended]

24. Section 25.5 *Terminology* is amended by removing the phrase '', an abbreviated antibiotic application,'' from paragraph (b)(1).

§ 25.31 [Amended]

25. Section 25.31 *Human drugs and biologics* is amended by removing paragraph (f) and redesignating paragraph (g) as paragraph (f), by removing paragraph (h), and by redesignating paragraph (i) through paragraph (l) as paragraph (g) through paragraph (j).

PART 50—PROTECTION OF HUMAN SUBJECTS

26. The authority citation for 21 CFR part 50 is revised to read as follows:

Authority: 21 U.S.C. 321, 346, 346a, 348, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 241, 262, 263b–263n.

§ 50.1 [Amended]

27. Section 50.1 *Scope* is amended by removing '', 507(d),'' from the first sentence of paragraph (a) and removing ''507,'' from the last sentence of paragraph (a).

§ 50.3 [Amended]

28. Section 50.3 *Definitions* is amended by removing and reserving paragraph (b)(11) and removing '', 507(d),'' from paragraph (c).

§ 50.23 [Amended]

29. Section 50.23 *Exception from general requirements* is amended in paragraph (d)(1) by removing the phrase ''(including an antibiotic or biological product)'' and adding in its place the phrase ''(including a biological product)''.

PART 54—FINANCIAL DISCLOSURE BY CLINICAL INVESTIGATORS

30. The authority citation for 21 CFR part 54 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c–360j, 371, 372, 373, 374, 375, 376, 379; 42 U.S.C. 262.

§ 54.4 [Amended]

31. Section 54.4 *Certification and disclosure requirements* is amended by removing ''507,'' from paragraph (a).

PART 56—INSTITUTIONAL REVIEW BOARDS

32. The authority citation for 21 CFR part 56 is revised to read as follows:

Authority: 21 U.S.C. 321, 346, 346a, 348, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 241, 262, 263b–263n.

§ 56.101 [Amended]

33. Section 56.101 *Scope* is amended by removing '', 507(d),'' from paragraph (a).

§ 56.102 [Amended]

34. Section 56.102 *Definitions* is amended by removing paragraph (b)(10), by redesignating paragraph (b)(11) through paragraph (b)(21) as paragraph (b)(10) through paragraph (b)(20), and by removing '', 507(d),'' from the first sentence of paragraph (c).

PART 58—GOOD LABORATORY PRACTICE FOR NONCLINICAL LABORATORY STUDIES

35. The authority citation for 21 CFR part 58 is revised to read as follows:

Authority: 21 U.S.C. 342, 346, 346a, 348, 351, 352, 353, 355, 360, 360b–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 262, 263b–263n.

§ 58.1 [Amended]

36. Section 58.1 *Scope* is amended by removing ''507,'' from paragraph (a).

§ 58.3 [Amended]

37. Section 58.3 *Definitions* is amended by removing and reserving paragraph (e)(9).

PART 60—PATENT TERM RESTORATION

38. The authority citation for 21 CFR part 60 is revised to read as follows:

Authority: 21 U.S.C. 348, 355, 360e, 360j, 371, 379e; 35 U.S.C. 156; 42 U.S.C. 262.

§ 60.3 [Amended]

39. Section 60.3 *Definitions* is amended by removing ''507(d),'' from paragraph (b)(5); by removing '', antibiotic drug,'' from paragraph (b)(10); and by removing ''or 507'' from paragraphs (b)(11)(i) and (b)(12)(i).

40. Section 60.22 is amended by revising paragraphs (a)(1) and (2) to read as follows:

§ 60.22 Regulatory review period determinations.

* * * * *

(a) * * *

(1) The testing phase begins on the date an exemption under section 505(i) of the Act becomes effective (or the date an exemption under former section 507(d) of the Act became effective) for the approved human drug product and ends on the date a marketing application under section 351 of the Public Health Service Act or section 505 of the act is initially submitted to FDA (or was initially submitted to FDA under former section 507 of the Act), and

(2) The approval phase begins on the date a marketing application under section 351 of the Public Health Service Act or section 505(b) of the Act is initially submitted to FDA (or was initially submitted under former section 507 of the Act) and ends on the date the application is approved.

* * * * *

PART 70—COLOR ADDITIVES

41. The authority citation for 21 CFR part 70 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 360b, 361, 371, 379e.

§ 70.10 [Amended]

42. Section 70.10 *Color additives in standardized foods, new drugs, and antibiotics* is amended by revising the heading to read ''*Color additives in standardized foods and new drugs*'', by revising the heading of paragraph (b) to read ''*New drugs*.'', and by removing the phrases ''or for certification of an antibiotic drug'' from the first sentence of paragraph (b)(1), ''or certification of an antibiotic drug'' from the first sentence of paragraph (b)(2), and ''or the request for certification of the antibiotic drug'' from paragraph (b)(3).

PART 71—COLOR ADDITIVE PETITIONS

43. The authority citation for 21 CFR part 71 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 351, 355, 360, 360b–360f, 360h–360j, 361, 371, 379e, 381; 42 U.S.C. 216, 262.

§ 71.2 [Amended]

44. Section 71.2 *Notice of filing of petition* is amended by removing the phrase ''or certifiable antibiotic'' from the last sentence of paragraph (a).

PART 200—GENERAL

45. The authority citation for 21 CFR part 200 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360e, 371, 374, 375.

PART 201—LABELING

46. The authority citation for 21 CFR part 201 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

47. Section 201.59 is amended by revising paragraph (a)(1) to read as follows:

§ 201.59 Effective date of §§ 201.56, 201.57, 201.100(d)(3), and 201.100(e).

(a) * * *

(1) If the drug is a prescription drug that is not a biologic and not subject to section 505 of the act (21 U.S.C. 355), and was not subject to former section 507 of the act (21 U.S.C. 357, repealed 1997), §§ 201.56, 201.57, and 201.100(d)(3) are effective on April 10, 1981.

* * * * *

§ 201.100 [Amended]

48. Section 201.100 *Prescription drugs for human use* is amended by removing ''or 507'' from paragraph (c)(2), and by removing ''or 507'' and ''or 507, respectively'' from paragraph (d)(1).

§ 201.150 [Amended]

49. Section 201.150 *Drugs; processing, labeling, or repacking* is amended by removing paragraphs (e) through (h).

PART 202—PRESCRIPTION DRUG ADVERTISING

50. The authority citation for 21 CFR part 202 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 352, 355, 360b, 371.

§ 202.1 [Amended]

51. Section 202.1 *Prescription-drug advertisements* is amended by removing paragraph (e)(4)(ii) and redesignating paragraph (e)(4)(iii) as paragraph (e)(4)(ii), by removing the words ''paragraphs (e)(4)(i) and (ii)'' from newly redesignated paragraph (e)(4)(ii) and by adding in their place the words ''paragraph (e)(4)(i)'', by removing ''(e)(4)(iii)'' and by adding in its place ''(e)(4)(ii)'' in paragraph (e)(6)(i), by removing '', 507, or 512'' from paragraph (e)(6)(xvii), by removing the phrase ''or antibiotic'' from indefinitely stayed paragraph (e)(6)(ii)(*a*); and by removing the phrase ''or a certified or released antibiotic,'' from indefinitely stayed paragraph (e)(6)(ii)(*b*).

PART 206—IMPRINTING OF SOLID ORAL DOSAGE FORM DRUG PRODUCTS FOR HUMAN USE

52. The authority citation for 21 CFR part 206 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 371; 42 U.S.C. 262.

PART 207—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

53. The authority citation for 21 CFR part 207 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 360, 360b, 371, 374; 42 U.S.C. 262.

§ 207.20 [Amended]

54. Section 207.20 *Who must register and submit a drug list* is amended by removing the words ''an antibiotic application,'' from paragraph (c).

§ 207.21 [Amended]

55. Section 207.21 *Times for registration and drug listing* is amended by removing the words ''antibiotic application,'' from the second sentence of paragraph (a).

§ 207.25 [Amended]

56. Section 207.25 *Information required in registration and drug listing* is amended by removing ''507,'' and by removing the phrase ''new animal drug application number, or antibiotic application number'' from paragraph (b)(2) and by adding in its place the phrase ''or new animal drug application number'', by removing ''or 507'' from paragraph (b)(4), and by removing ''507,'' from paragraph (b)(5) and paragraph (b)(6).

§ 207.31 [Amended]

57. Section 207.31 *Additional drug listing information* is amended by removing the phrase ''or 507'' from paragraph (a)(1) and by removing ''507,'' from paragraphs (a)(2) and (a)(3), and paragraph (c).

§ 207.35 [Amended]

58. Section 207.35 *Notification of registrant; drug establishment registration number and drug listing number* is amended by removing the phrase '', or supplemental antibiotic application'' from paragraph (b)(3)(v).

§ 207.37 [Amended]

59. Section 207.37 *Inspection of registrations and drug listings* is amended by removing ''507,'' from paragraph (a)(2)(i).

PART 210—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PROCESSING, PACKING, OR HOLDING OF DRUGS; GENERAL

60. The authority citation for 21 CFR part 210 is revised to read as follows:

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

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

61. The authority citation for 21 CFR part 211 is revised to read as follows:

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

PART 299—DRUGS; OFFICIAL NAMES AND ESTABLISHED NAMES

62. The authority citation for 21 CFR part 299 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 358, 360b, 371.

§ 299.4 [Amended]

63. Section 299.4 *Established names for drugs* is amended by removing the phrase ''or a new antibiotic drug'' from the fifth sentence of paragraph (d).

PART 300—GENERAL

64. The authority citation for 21 CFR part 300 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 360b, 361, 371.

§ 300.50 [Amended]

65. Section 300.50 *Fixed-combination prescription drugs for humans* is amended by removing the words ''or antibiotic monograph'' from paragraph (b).

PART 310—NEW DRUGS

66. The authority citation for 21 CFR part 310 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

67. Section 310.502 is amended by revising the introductory text of paragraph (a) and removing and reserving paragraph (b) to read as follows:

§ 310.502 Certain drugs accorded new drug status through rulemaking procedures.

(a) The drugs listed in this paragraph have been determined by rulemaking procedures to be new drugs within the meaning of section 201(p) of the act. An approved new drug application under section 505 of the act and part 314 of this chapter is required for marketing the following drugs:

* * * * *

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

68. The authority citation for 21 CFR part 312 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371; 42 U.S.C. 262.

§ 312.2 [Amended]

69. Section 312.2 *Applicability* is amended by removing ''or 507'' from paragraph (a) and by removing ''or antibiotic drug'' from paragraph (d).

§ 312.3 [Amended]

70. Section 312.3 *Definitions and interpretations* is amended by removing '', antibiotic drug,'' from the paragraph defining ''Investigational new drug'' and by removing the phrase '', a request to provide for certification of an antibiotic submitted under section 507 of the Act,'' from the paragraph defining ''Marketing application''.

Subpart E—Drugs Intended to Treat Life–Threatening and Severely–Debilitating Illnesses

71. The authority citation for 21 CFR part 312, subpart E is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 355, 371; 42 U.S.C. 262.

§ 312.81 [Amended]

72. Section 312.81 *Scope* is amended by removing '', antibiotic,'' from the introductory text.

73. Section 312.110 is amended by revising paragraph (b)(4) and by removing paragraph (b)(5) to read as follows:

§ 312.110 Import and export requirements.

* * * * *

(b) * * *

(4) This paragraph does not apply to the export of new drugs (including biological products, antibiotic drugs, and insulin) approved or authorized for export under section 802 of the act (21 U.S.C. 382) or section 351(h)(1)(A) of the Public Health Service Act (42 U.S.C. 262(h)(1)(A)).

§ 312.120 [Amended]

74. Section 312.120 *Foreign clinical studies not conducted under an IND* is amended by removing ''or antibiotic drug'' from the last sentence of paragraph (a).

§ 312.130 [Amended]

75. Section 312.130 *Availability for public disclosure of data and information in an IND* is amended by removing ''or antibiotic drug'' from paragraph (b).

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

76. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371, 374, 379e.

77. The heading for part 314 is revised to read as set forth above.

78. Section 314.1 is amended by revising paragraph (a) to read as follows:

§ 314.1 Scope of this part.

(a) This part sets forth procedures and requirements for the submission to, and the review by, the Food and Drug Administration of applications and abbreviated applications to market a new drug under section 505 of the Federal Food, Drug, and Cosmetic Act, as well as amendments, supplements, and postmarketing reports to them.

* * * * *

§ 314.50 [Amended]

79. Section 314.50 *Content and format of an application* is amended by removing ''or 507'' from the introductory text of paragraph (d).

§ 314.81 [Amended]

80. Section 314.81 *Other postmarketing reports* is amended in paragraph (a) by removing the words ''sections 505(k) and 507(g)'' and by adding in their place the words ''section 505(k)''.

§ 314.92 [Amended]

81. Section 314.92 *Drug products for which abbreviated applications may be submitted* is amended by removing and reserving paragraph (a)(2).

§ 314.94 [Amended]

82. Section 314.94 *Content and format of an abbreviated application* is amended by removing and reserving paragraph (c) and paragraph (d)(3).

§ 314.96 [Amended]

83. Section 314.96 *Amendments to an unapproved abbreviated application* is amended by removing paragraph (c).

§ 314.98 [Amended]

84. Section 314.98 *Postmarketing reports* is amended in paragraph (a) by removing the phrase ''approved abbreviated antibiotic application under § 314.94 or'' and in paragraph (c) by removing the words ''sections 505(k)

and 507(g)'' and by adding in their place the words ''section 505(k)''.

§ 314.100 [Amended]

85. Section 314.100 *Timeframes for reviewing applications and abbreviated applications* is amended in paragraph (a) by removing the phrase ''or of an application or abbreviated application for an antibiotic drug under section 507 of the act,''.

§ 314.101 [Amended]

86. Section 314.101 *Filing an application and an abbreviated antibiotic application and receiving an abbreviated new drug application* is amended by revising the heading to read ''*Filing an application and receiving an abbreviated new drug application*'', by removing the phrase ''or abbreviated antibiotic application'' each time it appears in this section, and by removing the phrase ''or abbreviated antibiotic'' in the first sentence of paragraph (a)(2).

§ 314.105 [Amended]

87. Section 314.105 *Approval of an application and an abbreviated application* is amended by removing the phrases ''or an abbreviated antibiotic application'' and ''or abbreviated antibiotic application'' from the first sentence of paragraph (a), by removing the fourth and sixth sentences of paragraph (a), and by removing the phrase ''or abbreviated antibiotic application'' from the first sentence of paragraph (b) both times it appears.

§ 314.110 [Amended]

88. Section 314.110 *Approvable letter to the applicant* is amended by removing the phrases ''or abbreviated antibiotic application'', ''or an abbreviated antibiotic application'', and ''or the abbreviated antibiotic application'' each time they appear in this section; by removing and reserving paragraph (a)(4); by removing '', or (a)(4)'' from the first sentence of paragraph (a)(5); and by removing the words ''under § 314.99'' from paragraph (a)(2) and paragraph (a)(5).

§ 314.120 [Amended]

89. Section 314.120 *Not approvable letter to the applicant* is amended by removing the phrase ''or abbreviated antibiotic application'' from the first sentence of the introductory text of paragraph (a) and from the third sentence of paragraph (a)(3), by adding the word ''or'' to the end of paragraph (a)(3), by removing and reserving paragraph (a)(4), and by removing the phrase ''(a)(3), or (a)(4)'' and adding in its place ''or (a)(3)'' in the first sentence of paragraph (a)(5).

§ 314.125 [Amended]

90. Section 314.125 *Refusal to approve an application or abbreviated antibiotic application* is amended by revising the heading to read ''*Refusal to approve an application*''; by removing the phrase ''or abbreviated antibiotic application'' each time it appears in this section; by removing the phrase '', or for an antibiotic publish a proposed regulation based on an acceptable petition under § 314.300,'' from the introductory text of paragraph (a); by removing the phrase ''or files a petition for an antibiotic proposing the issuance, amendment, or repeal of a regulation'' from paragraph (a)(2); and by removing ''or 507'' from paragraph (b)(2).

§ 314.126 [Amended]

91. Section 314.126 *Adequate and well-controlled studies* is amended in paragraph (a) by removing the word ''sections'' and adding in its place the word ''section'' and removing the words ''and 507'' from the third sentence and by removing the words ''and antibiotics'' from the fourth sentence.

§ 314.150 [Amended]

92. Section 314.150 *Withdrawal of approval of an application or abbreviated application* is amended by removing the phrase ''or, for an antibiotic, rescind a certification or release, or amend or repeal a regulation providing for certification under section 507 of the act and under the procedure in § 314.300,'' from the introductory text of paragraphs (a) and (b).

93. Section 314.170 is amended by revising the first sentence and by removing the phrase ''and approved antibiotic drugs'' from the second sentence to read as follows:

§ 314.170 Adulteration and misbranding of an approved drug.

All drugs, including those the Food and Drug Administration approves under section 505 of the act and this part, are subject to the adulteration and misbranding provisions in sections 501, 502, and 503 of the act. * * *

Subpart F—[Removed and Reserved]

94. Subpart F, consisting of § 314.300, is removed and reserved.

95. Section 314.410 is amended by revising the heading, by removing the phrase ''or an antibiotic'' from paragraph (a)(1), by removing the phrase ''or, in the case of an antibiotic not exempt from certification under part 433, it is also certified or released'' from paragraph (a)(1)(i), by removing the phrases ''or an antibiotic'' and '', and, in the case of an antibiotic, it is certified or released,'' from paragraph (b)(1), and by revising paragraph (b)(3) to read as follows:

§ 314.410 Imports and exports of new drugs.

* * * * *

(b) * * *

(3) Insulin or an antibiotic drug may be exported without regard to the requirements in section 802 of the act if the insulin or antibiotic drug meets the requirements of section 801(e)(1) of the act.

§ 314.430 [Amended]

96. Section 314.430 *Availability for public disclosure of data and information in an application or abbreviated application* is amended by removing paragraph (e)(8) and in paragraph (f)(6) by removing ''sections 505(j) and 507'' and adding in its place ''section 505''.

§ 314.500 [Amended]

97. Section 314.500 *Scope* is amended by removing the phrase ''and antibiotic''.

§ 314.530 [Amended]

98. Section 314.530 *Withdrawal procedures* is amended by removing the phrase ''and antibiotics'' from paragraph (a).

PART 316—ORPHAN DRUGS

99. The authority citation for 21 CFR part 316 continues to read as follows:

Authority: 21 U.S.C. 360aa, 306bb, 360cc, 360dd, 371.

§ 316.3 [Amended]

100. Section 316.3 *Definitions* is amended by removing the phrase '', a request for certification of an antibiotic under section 507 of the act,'' from paragraph (b)(9).

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

101. The authority citation for 21 CFR part 320 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 371.

§ 320.38 [Amended]

102. Section 320.38 *Retention of bioavailability samples* is amended by removing ''or 507'' from paragraph (a).

§ 320.63 [Amended]

103. Section 320.63 *Retention of bioequivalence samples* is amended by removing ''or 507'' from the first sentence.

PART 333—TOPICAL ANTIMICROBIAL DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

104. The authority citation for 21 CFR part 333 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

§ 333.103 [Amended]

105. Section 333.103 *Definitions* is amended by removing paragraph (a) and by removing the designation for paragraph (b).

§ 333.110 [Amended]

106. Section 333.110 *First aid antibiotic active ingredients* is amended in paragraph (a) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 448.510a(b)''; in paragraph (b) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 448.513f(b)''; in paragraph (c) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 446.510(b)''; in paragraph (d) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 444.542a(b)''; in paragraph (e) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 444.542b(b)''; and in paragraph (f) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 446.581d(b)''.

§ 333.120 [Amended]

107. Section 333.120 *Permitted combinations of active ingredients* is amended in paragraph (a)(1) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 448.510d(b)''; in paragraph (a)(2) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 448.510e(b)''; in paragraph (a)(3) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 448.510f(b)''; in paragraph (a)(4) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 448.513b(b)''; in paragraph (a)(5) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 448.513c(b)''; in paragraph (a)(6) by removing the phrase ''*Provided*, That it meets the tests and methods assay in § 448.513a(b)''; in paragraph (a)(7) by removing the phrase ''*Provided*, That is meets the tests and methods of assay in § 448.513e(b) of this chapter''; in paragraph (a)(8) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 448.513d(b)''; in paragraph (a)(9) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 444.542e(b)''; in paragraph (a)(10) by removing the phrase ''*Provided*, That it meets the tests, methods of assay, and potency in § 444.5421(b)''; in paragraph (a)(11) by removing the phrase ''*Provided*, That it meets the tests and methods assay in § 446.567b(b)''; in paragraph (a)(12) by removing the phrase ''*Provided*, That it meets the tests and methods assay in § 446.567c(b)''; in paragraph (b)(1) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 448.510a(b)''; in paragraph (b)(2) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 448.510e(b)''; in paragraph (b)(3) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 448.510f(b) of this chapter''; in paragraph (b)(4) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 448.513c(b) of this chapter''; in paragraph (b)(5) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 448.513a(b) of this chapter''; and in paragraph (b)(6) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 444.5421(b) of this chapter''.

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER–THE–COUNTER SALE

108. The authority citation for 21 CFR part 369 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371.

PART 510—NEW ANIMAL DRUGS

109. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.45 [Removed]

110. Section 510.45 *Packaging requirements for drugs for animal use* is removed.

§ 510.110 [Amended]

111. Section 510.110 *Antibiotics used in food-producing animals* is amended by removing the phrase ''to amend or revoke antibiotic regulations under the provisions of section 507 of the act, or'' in paragraph (e), by removing the phrase ''(except certifiable antibiotics)'' in the first sentence of paragraph (f), and by removing the last sentence of paragraph (f).

PART 514—NEW ANIMAL DRUG APPLICATIONS

112. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 379e, 381.

§ 514.10 [Removed]

113. Section 514.10 *Confidentiality of data and information in an investigational new animal drug notice and a new animal drug application file for an antibiotic drug* is removed.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 520.1204 [Amended]

115. Section 520.1204 *Kanamycin sulfate, aminopentamide hydrogen sulfate, pectin, bismuth subcarbonate, activated attapulgite suspension* is amended in paragraph (a) by removing the phrase ''(the kanamycin used conforms to the standards of identity, strength, quality, and purity prescribed by § 444.30 of this chapter)''.

116. Section 520.1263a is amended by revising paragraph (a) to read as follows:

§ 520.1263a Lincomycin hydrochloride monohydrate tablets and sirup.

(a) *Specifications.* The sirup contains lincomycin hydrochloride equivalent to either 25 milligrams or 50 milligrams of lincomycin.

* * * * *

§ 520.1263b [Amended]

117. Section 520.1263b *Lincomycin hydrochloride monohydrate and spectinomycin sulfate tetrahydrate soluble powder* is amended by removing the first complete sentence in paragraph (a).

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

118. The authority citation for 21 CFR part 522 continues to read as follows:

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

119. Section 522.1204 is amended by revising paragraph (a) to read as follows:

§ 522.1204 Kanamycin sulfate injection.

(a) *Specifications.* Each milliliter of kanamycin sulfate injection veterinary contains either 50 or 200 milligrams of kanamycin.

* * * * *

§ 522.1484 [Amended]

120. Section 522.1484 *Neomycin sulfate sterile solution* is amended by removing the second sentence of paragraph (a) but retaining footnote 1 at the end of paragraph (a).

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

121. The authority citation for 21 CFR part 524 continues to read as follows:

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

§ 524.1200a [Amended]

122. Section 524.1200a *Kanamycin ophthalmic ointment* is amended by removing paragraph (a)(1) and by removing the designation for paragraph (a)(2).

123. Section 524.1200b is amended by revising paragraph (a) to read as follows:

§ 524.1200b Kanamycin ophthalmic aqueous solution.

(a) *Specifications.* The drug, which is in an aqueous solution including suitable and harmless preservatives and buffer substances, contains 10 milligrams of kanamycin activity (as the sulfate) per milliliter of solution.

* * * * *

§ 524.1204 [Amended]

124. Section 524.1204 *Kanamycin sulfate, calcium amphomycin, and hydrocortisone acetate* is amended by removing paragraph (a)(1), by redesignating paragraphs (a)(2)(i) through (a)(2)(iii) as paragraphs (a)(1)(i) through (a)(1)(iii), and by redesignating paragraph (a)(3) as paragraph (a)(2).

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

125. The authority citation for 21 CFR part 529 continues to read as follows:

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

§ 529.360 [Amended]

126. Section 529.360 *Cephalothin discs* is amended by removing the phrase ‘‘, comply with the requirements of § 460.1 of this chapter’’ from paragraph (a) and adding in its place ‘‘have a uniform potency of 30 micrograms cephalothin per disc’’.

PART 800—GENERAL

127. The authority citation for 21 CFR part 800 is revised to read as follows:

Authority: 21 U.S.C. 321, 334, 351, 352, 355, 360e, 360i, 360k, 361, 362, 371.

PART 801—LABELING

128. The authority citation for 21 CFR part 801 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

PART 807—ESTABLISHMENT AND REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND DISTRIBUTORS OF DEVICES

129. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374.

§ 807.25 [Amended]

130. Section 807.25 *Information required or requested for establishment registration and device listing* is amended by removing ‘‘, 507,’’ in paragraph (f)(3).

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

131. The authority citation for 21 CFR part 809 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 360b, 360c, 360d, 360h, 360i, 360j, 371, 372, 374, 381.

§ 809.5 [Removed]

132. Section 809.5 *Exemption from batch certification requirements for in vitro antibiotic susceptibility devices subject to section 507 of the act* is removed.

§ 809.6 [Removed]

133. Section 809.6 *Conditions on the effectiveness of exemptions of antibiotic susceptibility devices from batch certification requirements* is removed.

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

134. The authority citation for 21 CFR part 812 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381, 382, 383; 42 U.S.C. 216, 241, 262, 263b–263n.

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

135. The authority citation for 21 CFR part 860 continues to read as follows:

Authority: 21 U.S.C. 360c, 360d, 360e, 360i, 360j, 371, 374.

§ 860.84 [Amended]

136. Section 860.84 *Classification procedures for ‘‘old devices’’* is amended by removing the fourth sentence in paragraph (a).

Dated: December 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 99–140 Filed 1–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 78N–0281]

Direct Food Substances Affirmed as Generally Recognized as Safe; Magnesium Hydroxide; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations on food for human consumption to correct an error in the Chemical Abstracts Service (CAS) registry number for magnesium hydroxide. This document corrects that error.

DATES: This regulation is effective January 5, 1999.

FOR FURTHER INFORMATION CONTACT: Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3077.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 5, 1985 (50 FR 13557), the agency amended its regulations by adding § 184.1428 (21 CFR 184.1428) to affirm that magnesium hydroxide is generally recognized as safe (GRAS) as a direct human food ingredient. The CAS registry number for magnesium hydroxide was incorrectly published as ‘‘($Mg(OH)_2$, CAS Reg. No. 1409–42–8)’’ instead of ‘‘($Mg(OH)_2$, CAS Reg. No. 1309–42–8)’’. Accordingly, the agency is amending § 184.1428 to correct the error.

Publication of this document constitutes final action on this change. Notice and public procedure are unnecessary because FDA is merely correcting a nonsubstantive error in its regulations.

List of Subjects in 21 CFR Part 184

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

§ 184.1428 [Amended]

2. Section 184.1428 *Magnesium hydroxide* is amended in paragraph (a) by removing ''($Mg(OH)_2$, CAS Reg. No. 1409–42–8)'' and adding in its place ''($Mg(OH)_2$, CAS Reg. No. 1309–42–8)''.

Dated: December 21, 1998.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–28 Filed 1–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–98–079]

RIN 2115–AE47

Temporary Drawbridge Regulations; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operation regulation governing the Burlington Railroad Drawbridge, Mile 403.1, Upper Mississippi River. The drawbridge shall open on signal if at least six (6) hours advance notice is given from 12:01 a.m. on December 31, 1998, until 12:01 a.m. on March 1, 1999. Advance notice may be given by calling (309) 345–6103 during work hours or (309) 752–5244 after hours. This arrangement is necessary to perform annual maintenance and repair work on the bridge.

DATES: This temporary rule is effective from 12:01 a.m. on December 31, 1998, until 12:01 a.m. on March 1, 1999.

ADDRESSES: The public docket and all documents referred to in this notice will be available for inspection and copying at room 2.107f in the Robert A. Young Federal Building at Director, Western Rivers Operations (ob), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63101–2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator; Director, Western Rivers Operations, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63101–2832, telephone (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION: On December 1, 1998, Burlington Northern Santa Fe requested a temporary change to the operation of the Burlington Railroad Drawbridge across the Upper Mississippi River, Mile 403.1 at Burlington, Iowa. The Railroad requested that the bridge be allowed to open for navigation between December 31, 1998 and March 1, 1998 upon a six (6) hour advance notice so that necessary maintenance and bridge repair activities can be performed. Advance notice may be given by calling Al Poole, (309) 345–6103 during work hours and Larry Moll, (309) 752–5244, after hours.

In accordance with 5 U.S.C. 533, a notice of proposed rulemaking has not been published and good cause exists for making this rule effective in less than 30 days from publication. Following normal rulemaking procedures would be impractical. Delaying implementation of the regulation will not benefit navigation and would result in unnecessary delays in repairing the bridge.

Background and Purpose

The Burlington Railroad Drawbridge has a vertical clearance of 21.5 feet above normal pool in the closed to navigation position. Navigation on the waterway consists of commercial tows and recreational watercraft. Presently the draw opens on signal for passage of river traffic. This temporary drawbridge operation amendment has been coordinated with the commercial waterway operators who do not object. Winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineer's Locks No. 11, 12, 19, 20, 24, and 25 until March 1, 1999, will preclude any significant navigation demands for the drawspan openings. The Burlington Railroad Drawbridge is located downstream of Lock 18 and upstream of Lock 19. Performing maintenance on the bridge during the winter when no vessels are impacted is preferred to bridge closures or advance notification requirements during the commercial navigation season.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This is because river traffic will be extremely limited by lock closures and ice during this period.

Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Coast Guard must consider whether this temporary rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Because it expects the impact of this action to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this action will not have economic impact on a substantial number of small entities.

Collection of Information

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

Federalism Assessment

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

Environment Assessment

The Coast Guard considered the environmental impact of this temporary rule and concluded that this action is categorically excluded from further environmental documentation in accordance with Section 2.B.2, Figure 2–1 (32)(e) of the National Environmental Protection Act Implementing Procedures, COMDTINST M16475.1C.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. Sec. 499; 49 C.F.R. 1.46; 33 C.F.R. 1.05–(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Effective 12:01 a.m. on December 31, 1998, through 12:01 a.m. on March 1, 1999, Section 117.5–T–08–079 is added to read as follows:

§ 117.5–T–08–079 Upper Mississippi River.

Burlington Railroad Drawbridge, Mile 403.1, Upper Mississippi River. From 12:01 a.m. on December 31, 1998 through 12:01 a.m. on March 1, 1999, the drawspan shall open on signal if at least six (6) hours advance notification is given. Advance notice may be given by calling (309) 345–6103 during work hours and (309) 752–5244 after hours.

Dated: December 22, 1998.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 99–57 Filed 1–4–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–98–064]

RIN 2115–AE47

Drawbridge Operating Regulation; Lafourche Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is finalizing the interim regulations regarding the modifications to the operating regulations for the SR1 vertical lift bridge (Galliano-Tarpon bridge), mile 30.6, and the SR1 pontoon bridge (Cote Blanche bridge), mile 33.9, near Cutoff, Lafourche Parish, Louisiana.

DATES: This final rule becomes effective on January 5, 1999.

ADDRESSES: Documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. Commander (ob) maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: On October 14, 1998, the Coast Guard published interim regulations (63 FR 55030) to modify the drawbridge operation regulations for the SR1 vertical lift bridge (Galliano-Tarpon bridge), mile 30.6, and the SR1 pontoon bridge (Cote Blanche bridge), mile 33.9, near Cutoff, Lafourche Parish, Louisiana.

The modification to the regulation facilitates the movement of the school bus traffic while still providing for the reasonable needs of navigation. The interim rule requires the draws of the SR1 bridge, mile 30.6, and the SR1 bridge, mile 33.9, both near Cutoff, shall open on signal except that, from 2:30 p.m. to 3:30 p.m., and from 4:30 p.m. to 5:30 p.m. Monday through Friday except Federal holidays, the draws need not open for the passage of vessels.

The 60-day comment period expired on December 14, 1998. The Coast Guard did not receive any comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include (1) small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and (2) governmental jurisdictions with populations of less than 50,000.

The amended regulation adjusts the hours that the bridges need not open for the passage of vessels by 30 minutes. Any impact the adjustment may have on small entities is not substantial. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under Figure 2–1, CE # 32(e) of the NEPA Implementing Procedures, COMDINST M16475.IC, this final rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

Accordingly, the interim rule amending 33 CFR part 117 which was published at 63 FR 55030 on October 14, 1998, is adopted as a final rule without change.

Dated: December 22, 1998.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 99–55 Filed 1–4–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596–AB62

Small Business Timber Sale Set-Aside Program; Appeal Procedures on Recomputation of Shares

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures by which timber purchasers may comment on an appeal the recomputation of shares and related decisions made under the Small Business Timber Sale Set-aside Program. This rule clarifies the kinds of decisions that are subject to appeal, who may appeal decisions, the procedures for appealing decisions, the timelines for appeal, and the contents of the notice of appeal. The intended effect is to provide an opportunity for timber sale purchasers to appeal small business shares as called for in the conference report accompanying the Fiscal Year 1997 Omnibus Appropriations Act. This final rule supersedes the interim rule published March 24, 1997.

DATES: This final rule is effective January 20, 1999.

FOR FURTHER INFORMATION CONTACT: Rod Sallee, Forest Management Staff, (202) 205–1766.

SUPPLEMENTARY INFORMATION:

Background

Developed in cooperation with the Small Business Administration, the Forest Service Small Business Timber Sale Set-aside Program is designed to ensure that qualifying small business timber purchasers have the opportunity to purchase a fair proportion of National Forest System timber offered for sale. The current set-aside program was adopted July 26, 1990 (55 FR 30485).

Under the program, the Forest Service must recompute the shares of timber sales to be set aside for qualifying small businesses every 5 years on the actual volume of sawtimber that has been purchased and/or harvested by small business. Also, shares must be recomputed if there is a change in manufacturing capability, if the purchaser size class changes, or if certain purchasers discontinue operations. Direction to guide employees in administering the Small Business Timber Sale Set-aside Program is issued in the Forest Service Manual, Chapter 2430, and Chapter 90 of the Forest Service Timber Sale Preparation Handbook (FSH 2409.18).

In 1992, the agency adopted new administrative appeal procedures at 36 CFR part 215 in response to new statutory direction. These rules apply to certain National Forest System project-level decisions for which an environmental assessment (EA) or impact statement (EIS) has been prepared. Because the recomputation of shares under the Small Business Timber Sale Set-aside Program is not subject to documentation in an EA or EIS, the decisions on the 1996–2000 Forest Service recomputation of small business shares were not subject to the new appeal procedures. However, since the agency had accepted appeals of recomputation decisions under 36 CFR part 217 prior to adoption of part 215, the agency decided to establish procedures for providing notice to affected purchasers with opportunity to comment on the recomputation of shares. Notice of these procedures was published in the **Federal Register** on February 28, 1996 (61 FR 7468).

The Conference Report accompanying the 1997 Omnibus Appropriation Act (Pub. L. 104–208) found the Forest Service decision to eliminate an administrative appeals opportunity for the Small Business Timber Sale Set-Aside Program ''unacceptable'' and directed the Forest Service to reinstate an appeals process before December 31, 1996. The Conference Report required that the agency establish a process by which purchasers may appeal decisions concerning recomputations of Small Business Set-Aside (SBA) shares, structural recomputations of SBA shares, or changes in policies impacting the Small Business Timber Sale Set-Aside Program. It also provided that, as in the past, decisions related to the designation of the sales to be set aside are not subject to appeal. An interim rule published March 24, 1997 (62 FR 13826), went into effect immediately to comply with the Conference Report accompanying the FY 1997 Omnibus Appropriations Act. However, the agency also requested comment on the interim rule.

Response to Comments Received

Fifteen responses were received on the interim rule. Comments were received from 13 purchasers, one timber industry representative reflecting the joint views of four industry associations, and the Small Business Administration. A summary of the comments and the Department's response follows:

General Comments

Comment: Fairness and balance of the rule. One timber industry reviewer remarked that the rules were not fair or balanced and should be rejected.

Response. This respondent did not specify what is unfair or unbalanced in the interim rule and did not provide suggestions for modifying or improving the regulations. Therefore, the Department is unable to address the respondent's concerns directly. Nevertheless, the Department believes the final rule is fair and balanced with regard to both the decisions that can be appealed and who may participate in appeals.

Comment: Large purchasers influence. One respondent stated that the interim rule gives ''undue influence to non-small business timber purchasers'' and, as a result, limits the small business community's opportunity to purchase a fair proportion of National Forest System timber offered for sale.

Response. It appears that this respondent does not understand that the interim rule applies both to small and large businesses. The interim rule limits neither party's opportunity to purchase National Forest System timber and gives all purchasers within the area, regardless of size, equal opportunity to comment on and appeal the market share computations. Because the respondent was not specific about how the rule gives ''undue influence to non-small business timber purchasers,'' the Department is unable to address this comment in more depth.

Comment: Include appeals under 36 CFR part 251, subpart C. Several respondents suggested placing the Small Business Timber Sale Set-Aside Program appeal rule under 36 CFR part 251, subpart C, Appeal of Decisions Relating to Occupancy and Use of National Forest Systems Lands. In particular, an organization representing timber purchasers asserted that the Forest Service had never explained why timber purchasers are not afforded the same appeal procedures as other National Forest System commercial users, such as holders of grazing, mining, and special use permits.

Response. Regulations at 36 CFR part 251, subpart C, set our procedures for appealing decisions related to occupancy and use of National Forest System lands through the issuance of written authorizations. By contrast, timber sales are governed by contracts, and contracts disputes are governed by the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.) settled by the Agriculture Board of Contract Appeals under 7 CFR part 24. Moreover, the nature of the timer sale set-aside decisions which are subject to appeal under 36 CFR 223.118 are more limited than those decision appealable under 36 CFR part 251, subpart C, and the set-aside decisions precede the request for bids and award of contracts, a prerequisite for appeal under 36 CFR part 251. The Small Business Timber Sale Set-Aside Appeal process gives purchasers the opportunity to appeal discrepancies in data related to the share of timber to be made available for bidding by large and small businesses, as well as other decisions about the recomputation process. The Department believes trying to intermingle the set-aside sale decisions and appeal

procedures in part 251, subpart C, would unnecessarily complicate the appeal process and prove burdensome to the appellant and the agency. However to the extent possible, the Department has made the Small Business Timber Sale Set-Aside Appeal regulations consistent with the procedural rules governing the appeal of other Forest Service decisions under 36 CFR parts 215 and 217 in the belief that providing similar appeal procedures for recomputation of shares and related decisions at 36 CFR part 223 should facilitate appellant understanding and use.

Comments on Specific Provisions of the Interim Rule

Section 223.118(a) Decisions subject to appeal. Paragraph (a) of § 223.118 specifies that only those decisions leading to recomputation of shares in the Small Business Timber Sale Set-Aside Program are subject to appeal. Decisions leading to the recomputation of shares include structural change, special change, and market change decisions as well as the scheduled 5-year recomputations of the small business share of timer sales.

Comment. Five respondents suggested that the range of decisions subject to appeal should be expanded to include other critical decisions, such as changes in delineation of market areas and decisions to initiate a Small Business Timber Sale Set-Aside Program within the market area (trigger decisions). By contrast, the Small Business Administration (SBA) indicated that they would like to make certain that the types of decisions subject to appeal in paragraph (a) of the interim rule remain restricted to those listed in the interim rule as structural, special, market change, or the scheduled 5-year recomputation of the small business share of timber sales. The SBA specifically disagreed with suggestions by some small purchasers that decisions selecting the sales to be designated as timber set-aside sales should also be appealable.

Response. Because the SBA has the key responsibility for administering the overall Small Business programs, the Department concurs with SBA's recommendation not to expand the appeal categories.

However, having considered industry comments, the Department believes some clarification of the intended range and type of decisions that are subject to appeal would be helpful. Some changes in the Small Business Timber Sale Set-Aside Program require decisions to be made at two different times; for example, structural changes have two decision points—the first is the decision that a structural change is needed. This is followed by a later decision that recomputes and establishes a new small business share recomputation. Other unique situations, such as carryover volume, may require two decisions, first, determining the next recomputation period and, secondly, recomputing the shares. In both cases, decisions made at the earlier stage as well as the later stage are appealable. Paragraph (a) of the final rule has been revised to clarify which decisions are appealable.

The second sentence is paragraph 228.118(a) of the interim rule described who may appeal recomputation related decisions. Since the substance of this provision is already set out in paragraph (c), Who may appeal or file written comments as an interested party, this sentence is redundant and has been removed from paragraph (a) in the final rule.

Section 223.118(b)(1) Predecisional notice and comment. No comment was received on this regulatory provision; therefore, no substantive changes have been made to the text in the final rule.

Section 223.118(b)(2) Notice of decision. Paragraph (b)(2) requires the Responsible Official, upon close of the 30-day predecisonal review period, to consider any comments received, make a decision on the small business shares or related matters, and give prompt notice to all parties on the bidders' list for the bid area.

Comment. The Small Business Administration suggested that the Forest Service and the Small Business Administration make a joint decision on the small business shares, requiring the signature of officials from both agencies on the Notice of Decision.

Response. Agency officials ''cooperate fully with Small Business Administration representatives in meeting the spirit and objectives of the small business timber sale set-aside programs'' (FSM 2436.03). Nevertheless, it would be unwieldy and time-consuming the require approval of both agencies each time a decision on a Small Business Timber Sale Set-Aside matter is made. Moreover, the administration of the timber sale set-aside program, including decisions on recomputation of shares, is ultimately the responsibility of the Forest Service. For these reasons, the Department has not adopted this recommendation.

Section 223.118(c) Who may appeal or file written comments. This provision of the interim rule provides that only timber sale purchasers who are affected by the recomputations of the small business share of the timber sale program, or their representatives, and who have submitted predecisional comment may appeal recomputation decisions.

Comment. Several respondents agreed with the interim rule requirement limiting appeal to timber sale purchasers who are on the bidders' list for the affected area and who have submitted predecisional comments. However, one respondent suggested that both small and large businesses be given the opportunity to provide comment as an interested party to any appeal submitted and several recommended allowing interveners.

Response. While the intent of the interim rule was to give both small and large business the opportunity to participate as appellants in the appeal process, the interim rule did not provide for interested parties to participate. In light of the comment on this provision, the Department has reconsidered and consequently has revised the final rule at § 223.118(c)(1) through (c)(3) to allow timber sale purchasers who are affected by recomputation decisions and who submitted predecisional comment to submit written comment as an interested party to the Appeal Deciding Officer within 15 days after the close of the appeal filing period for any filed appeal.

Comment. One respondent remarked that a timber purchasing firm with legitimate interest in being an appellant might not have filed earlier comments in the firm's name, because the comments were filed in the name of an association to which the firm belongs. In this case, if the association does not wish to pursue an appeal, but one of its members firms wants to appeal, the respondent felt that the member firm should not be barred from filing an appeal based on the fact that it was not an entity that had commended earlier.

Response. The Department disagrees that the member firm should have the right to appeal without having commented as an individual timber sale purchaser on the predecisional notice. However, the agency has reconsidered who may be considered interested parties to an appeal and, subsequently, has amended the language in the final rule to allow member firms to file comments on an appeal as an interested party. Paragraph (c)(2) of § 223.118 clarifies that a timber sale purchaser is considered an interested party, even if an association of which they are a member files comments but decides not to appeal. The rule makes clear that if an association appeals but the individual timber sale purchaser did not file an individual predecisional

comment, then the purchaser is not eligible to file a separate appeal.

Comment. One respondent suggested that affected purchasers be defined as small business companies employing less than five hundred employees.

Response. The Department disagrees that affected purchasers should be limited to small businesses and that only small businesses should be able to appeal small business share decisions. The small business set-aside program is designed to allocate shares among small and large businesses and, therefore, large and small businesses are equally eligible to appeal recomputation decisions or file written comments as interested parties.

Section 223.118(d) Level of appeal. This provision of the interim rule provides for one level of appeal and notes that the Appeal Deciding Officer is normally the Regional Forester.

Comment. One respondent suggested that appeals under this rule be decided by the highest official in the Forest Service.

Response. The Department disagrees with this suggestion. Share decisions are located decisions affecting a defined market area. The land management official who oversees timber sales for the area is best prepared to make such a decision. Issues can best be understood and addressed through local dialogue. Also, this provision is consistent with the general appeal process at 36 CFR part 215, which provides only one level of appeal.

Section 223.118(e) through (h)(2). No comments were received on paragraphs § 223.118(e) through (h)(2) of the interim rule; therefore, these paragraphs are retained as they appeared in the interim rule, except for minor editorial changes.

Section 223.118(h) Dismissal without decision. The agency determined that further clarification was needed to specify what information is required in order to review an appeal and to clarify that an appeal will be dismissed without decision unless that information is provided. Therefore, a new paragraph (h)(3) is added to this section which states that the Appeal Deciding Officer must dismiss an appeal if the appellant's notice of appeal does not contain the information required by paragraph (f) of this section. Paragraph (h)(3) of the interim rule is retained but is redesignated paragraph (h)(4) in the final rule.

Section 223.118(i) Appeal record. No comments were received on this provision and, subsequently, no substantive changes are made to this paragraph in the final rule.

Section 223.118(j) Appeal decision. This provision of the interim rule states that the Appeal Deciding Officer shall review the decision and appeal record and issue a written appeal decision to the parties within 30 days of the close of the appeal period. The Appeal Deciding Officer may affirm or reverse the Responsible Official's decision, in whole or in part. The time period for issuing the appeal decision may not be extended. Additional provisions of this paragraph of the interim rule state that if a decision is not rendered within the required 30 days, the existing decision is automatically affirmed. The Appeal Deciding Officer's decision or the failure of the Appeal Deciding Officer to decide within the required 30 days would constitute a final administrative decision of the Department of Agriculture.

Comment. Ten respondents suggested requiring a formal response to an appeal rather than allowing automatic affirmation of the existing decision if no formal response was made within 30 days.

Response. Upon reconsideration, the Department agrees with this suggestion. Accordingly, the final rule at § 223.118(j) is revised to require the Appeal Deciding Officer to issue a written appeal decision to the parties within 30 days of the close of the appeal period. The provision in the interim rule at § 223.118(j), which affirmed the decision under appeal if no formal response is made within 30 days, is not retained in the final rule.

Comment. Several respondents suggested allowing oral presentation during the appeal process. In addition, one respondent remarked that § 215.16 of this chapter of the Code of Federal Regulations allows parties to request a meeting for informal discussions.

Response. The provisions at part 215 of this chapter provide an informal process for resolving issues concerning National Forest System projects and activities. The Small Business Timber Sale Set-aside Appeal process is designed, however, to address discrepancies in data used to make the recomputation of shares. Because of the factual basis of the information provided for recomputation appeals, an oral presentation would not likely be the best medium for presenting data in an appeal of this type. Furthermore, there is ample opportunity for informal discussion with he responsible official prior to the decision. Paragraph (b)(1) of § 223.118 allows 30 days for predecisional review and comment. However, in response to this comment and to provide additional opportunity to discuss and clarify factual material, a new paragraph (j)(2) has been added to permit Appeal Deciding Officers, at their discretion, to invite an appellant to discuss data relevant to the appeal.

Comment. Several respondents recommended that responsive statements be a requirement of the appeals process.

Response. If the Responsible Official and the Appeal Deciding Officer agree that the information in the appeal records clearly demonstrates the basis for the decision, then a responsive statement addressing the points of the appeal is not necessary. If the records do not adequately demonstrate the basis for the decision, then the Responsible Official may voluntarily prepare or the Appeal Deciding Officer may direct that the Responsible Official prepare a responsive statement. Also, the Appeal Deciding Officer may request additional information from either the Responsible Official or the appellant for clarification of appeal issues. The clarifying information must be based upon information previously documented in the files or in the appeal. A voluntarily prepared responsive statement or any information provided as a result of the Appeal Deciding Officer's request for more information must be made available to both parties. Either party will have 5 days after the Appeal Deciding Officer receives the additional information to review and comment on the information, and the appeal decision period will be extended 5 additional days to accommodate this review period.

The Appeal Deciding Officer must review the decision and appeal record and issue a written appeal decision to the parties within 30 days of the close of the appeal period, except, as previously noted, that period will be extended to 35 days to allow 5 days review by parties when additional information is requested by the Appeal Deciding Officer.

Paragraph 223.118(j) of this section has been revised to incorporate these procedures and timeframes.

Comment. The Small Business Administration suggested that the regulations include a provision requiring the Appeal Deciding Officer to consult with the Small Business Administration on appeals of recomputations.

Response. Forest Service Manual direction already requires employees to cooperate fully with the Small Business Administration (FSM 2436.03). In addition, a Forest Service Responsible Official is required to consult the Small Business Administration when issuing an initial decision that is subject to appeal (FSH 2409.18, 91).

Administration of the agency's Small Business Administration Program, including decisions on recomputation of shares, is the responsibility of the Forest Service; therefore, the Department has not adopted this recommendation. However, in recognition of the potential value of the Small Business Administration's participation in the appeals process, the Department has revised paragraph (c)(2) to include the Small Business Administration as an interested party to an appeal under this section.

Section 223.118(k) Implementation of decisions during pendency of appeal. No comments were received on this provision of the interim rule; therefore, the paragraph is retained without change in the final rule.

Section 223.118(l) Timber sale set-aside policy changes. The agency received no comment on paragraph § 223.118(l) of the interim rule; therefore, this paragraph is retained without change in the final rule. As stated in the preamble of the interim rule, timber purchasers are given an opportunity to review and comment on significant changes in the Small Business Timber Sale Set-aside program or policy prior to adoption and implementation. This opportunity is given through **Federal Register** notice and is consistent with the agency's treatment of all other major policy decisions.

Controlling Paperwork Burdens on the Public

In the interim rule, the agency requested comment on the information collection requirement for the Small Business Timber Sale Set-aside Program, Office of Management and Budget number 0596–0141. The information required by paragraph (f) of the interim rule must be provided by purchasers who object to the decision recomputing timber sales to be set aside for small timber purchasers and who wish to file an appeal.

Comment. One respondent commented that the estimates of the time required to prepare appeals of Small Business Timber Sale Set-aside decisions were too low. This respondent assumed that an appellant would have to develop an individual database, and, under this assumption, the reviewer stated that it would take 4-hours per market area per 6-month period to collect the Small Business Set-aside decision appeal information into a database. This respondent suggested that the burden be increased to 8 hours per market area to analyze any proposed change and 2 hours to write the comments. Another respondent indicated that the agency's estimate of the burden of the proposed collection is ''way low.'' This respondent also said that managing the information collection electronically would reduce the burden of collection.

Response. The requirements in § 223.118 (f) set out the information that must be provided in a notice of appeal of recomputations of Small Business Set-aside Timber Sale shares or related decisions. The agency does not expect that appellants would need to establish an individual database in order to collect this information, since commercial databases are already available which provide easy, fast access to recomputation-related information.

Furthermore, the agency recognizes that the time to prepare a collection would vary depending on the appeal issue. The estimate of the burden of the proposed collection is intended to be an average of the time that might be required to file an appeal under these regulations. Therefore, the Department does not agree that an adjustment to the number of hours is needed.

Comment. One respondent thought that the proposed collection of information appears reasonable except for the requirements of paragraph (f)(2)(vi) of the rule, which requires the appellant to list specific references to any law, regulation, or policy that the appellant believes to have been violated and the basis for such an allegation, and paragraph (f)(2)(vii), which requires a statement as to whether and how the appellant has tried to resolve with the Responsible Official the issue(s) being appealed, including evidence of submission of written comments at the predecisional stage. The respondent indicated that listing legal references does not add meaningful information and remarked that the burden of documenting how issues have been resolved should be shared between the appellant and the Responsible Official.

Response. The Department agrees that in some circumstances the requirements of paragraph (f)(2)(vi) may not apply to the decision being appealed and, accordingly, has edited the provision to indicate that this information is needed only if the appellant believes a law, regulation, or order is being violated. Paragraph (f)(2)(vii) is intended to encourage resolution of the issues in the spirit of an informal administrative process and, thus, avoid entering into a formal appeal process. Documenting whether and how such issue resolution occurred is not intended to be burdensome, but the information is necessary to provide evidence that the party did submit predecisonal comments and, therefore, is eligible to appeal. Accordingly, the Department does not agree that a change in paragraph (f)(2)(vii) is necessary.

This information collection has been reviewed by the Office of Management and Budget according to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320. The Office of Management and Budget has approved information requirements and assigned control number 0596–0141, which expires May 31, 2000.

The preamble to the interim rule stated that when the information collection was approved by the Office of Management and Budget, a separate notice would be published in the **Federal Register** announcing the effective date of the information requirements. Although the agency received this approval, due to an oversight, the agency did not publish notice of that approval prior to publication of this final rule. The final rule contains a new paragraph (m) which sets forth the information collection control number.

Other Comments

Several respondents commented on other aspects of the timber sale set-aside program. Two respondents said the small business appeal process was not needed. One reviewer commented on the difficulty that small companies have bidding against large companies. These comments are beyond the scope of this rulemaking, and, therefore, not addressed as part of this final rule.

Conclusion

Based on the comments received, the interim rule has been revised to clarify decisions subject to appeal, to allow interested party participation, to modify information requirements in an appeal, to allow the Appeal Deciding Officer to request additional information from the appellant or a responsive statement from the Responsible Official, to remove automatic affirmation of the existing decision, and to clarify the filing procedure, when appeals may be dismissed without decision, and the appeal decision process. The final rule offers affected timber purchasers of any size the opportunity to appeal decisions related to the recomputation of share calculations for the Timber Sale Set-aside Program.

Environmental Impact

This final rule would establish uniform procedures for providing qualifying timber purchasers the opportunity to review, comment on, and

appeal decisions on recomputed shares of the Timber Sale Set-aside Program. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's assessment is that this final rule falls within this category of actions and has no direct or indirect environmental impact, and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. No comments were received to the contrary.

Unfunded Mandates Reform

Pursuant to Tile II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the Department has assessed the effects of this rule on State, local, and tribal governments and the private sector. This final rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This final rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to Office of Management and Budget review under Executive Order 12866.

Pursuant to 5 U.S.C. 605(b), it is hereby certified that this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 60 *et seq.*) and that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. The final rule imposes no additional requirements on small business timber sale purchasers or other small entities. It merely implements legislative intent to provide small purchasers an administrative appeal opportunity. To facilitate the preparation and process of timber sale set-aside appeals, the agency has kept the appeal procedures as streamlined and as simple as possible.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally-protected private property. This final rule provides qualifying timber sales purchasers the opportunity to comment on and appeal the procedures for purchasing a fair proportion of the National Forest System timber offered for sale and neither abrogates or expands any rights related to such sales.

Civil Justice Reform Act

This final rule has been reviewed under Executive Order 12788, Civil Justice Reform, therefore: (1) all state and local laws and regulations that are in conflict with this final rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this final rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

List of Subjects in 36 CFR Part 223

Administrative practice and procedure, Exports, Forests and forest products, Government contracts, National forests, and Reporting and recordkeeping requirements.

Therefore, for the reasons set forth in the preamble, Subpart B of Part 223 of Title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for Part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618; 104 Stat. 714–726, 16 U.S.C. 620–620h, unless otherwise noted.

Subpart B—Timber Sale Contracts—[Amended]

2. Revise § 223.118 to subpart B to read as follows:

§ 223.118 Appeal process for small business timber sale set-aside program share recomputation decisions.

(a) *Decisions subject to appeal.* The rules of this section govern appeal of recomputation decisions related to structural, special, or market changes or the scheduled 5-year recomputations of the small business share of National Forest System timber sales. Certain decisions related to recomputation of shares, such as structural change and carryover volume, may require two decisions, one to determine that a recomputation is needed and the other to recompute the shares. Decisions made both at the earlier stage as well as the later stage are appealable.

(b) *Manner of giving notice.* (1) *Predecisional notice and comment.* The Responsible Official shall provide qualifying timber sale purchasers, as defined in paragraph (c)(1) of this section, 30 days for predecisional review and comment on any draft decision to reallocate shares, including the data used in making the proposed recomputation decision.

(2) *Notice of decision.* Upon close of the 30-day predecisional review period, the Responsible Official shall consider any comments received. Within 15 days of the end of the comment period, the Responsible Official shall make a decision on the small business shares and shall give prompt written notice to all parties on the national forest timber sale bidders list for the affected area. The notice of decision must identify the name of the Appeal Deciding Officer, the address, the date by which an appeal must be filed, and a source for obtaining the appeal procedures information.

(c) *Who may appeal or file written comments as an interested party.* (1) Only timber sale purchasers, or their representatives, who are affected by recomputations of the small business share of timber sales as described in paragraph (a) of this section and who have submitted predecisional comments pursuant to paragraph (b)(1) of this section, may appeal recomputation decisions under this section or may file written comments as an interested party.

(2) Interested parties are defined as the Small Business Administration and those timber sale purchasers, or their representatives, who are affected by recomputations of the small business share of timber sales as described in paragraph (a) of this section and who have individually, or through an association to which they belong, submitted predecisional comments pursuant to paragraph (b)(1) of this section.

(i) A timber sale purchaser may submit comments on an appeal as an interested party if an association to which the purchaser belongs filed predecisional comment but later decides

not to appeal or not to file comments as an interested party.

(ii) A timber sale purchaser, who is a member of an association that appeals a decision, may not file a separate appeal unless that purchaser filed separate predecisional comment under paragraph (b)(1).

(3) Interested parties who submit written comments on an appeal filed by another party may not continue an appeal if the appellant withdraws the appeal.

(d) *Level of appeal.* Only one level of review is available for appeal of decisions pertaining to recomputations under the Small Business Timber Sale Set-aside Program. The Appeal Deciding Officer is the official one level above the level of the Responsible Official who made the recomputation of shares decision. The Responsible Official is normally the Forest Supervisor; thus, the Appeal Deciding Officer is normally the Regional Forester. However, when the Regional Forester makes recomputation decisions, the Appeal Deciding Officer is the Chief or such officer at the National headquarters level as the Chief may designate.

(e) *Filing procedures.* In order to file an appeal under this section, an appellant must file a notice of appeal, as specified in the notice of decision, with the Appeal Deciding Officer within 20 days of the date on the notice of the decision. This date must be specified in the notice of decision given pursuant to paragraph (b)(2) of this section. Written comments filed by an interested party in response to an appeal must be filed within 15 days after the close of the appeal filing period.

(f) *Content of notice of appeal.* (1) It is the responsibility of the appellant to provide sufficient narrative evidence and argument to show why a recomputation decision by the Responsible Official should be reversed or changed.

(2) An appellant must include the following information in a notice of appeal:

(i) The appellant's name, mailing address, and daytime telephone number;

(ii) The title or type of recomputation decision involved, the date of the decision, and the name of the Responsible Official;

(iii) A brief description and date of the decision being appealed:

(iv) A statement of how the appellant is adversely affected by the decision being appealed;

(v) A statement of the facts in dispute regarding the issue(s) raised by the appeal;

(vi) If relevant, any specific references to any law, regulation, or policy that the appellant believes to have been violated and the basis for such an allegation;

(vii) A statement as to whether and how the appellant has tried to resolve with the Responsible Official the issue(s) being appealed, including evidence of submission of written comments at the predecisional stage as provided by paragraph (a) of this section, the date of any discussion, and the outcome of that meeting or contact; and

(viii) A statement of the relief the appellant seeks.

(g) *Time periods and timeliness.* (1) All time periods applicable to this section will begin on the first day following a decision or action related to the appeal.

(2) Time periods applicable to this section are computed using calendar days. Saturdays, Sundays, or Federal holidays are included in computing the time allowed for filing an appeal; however, when the filing period would expire on a Saturday, Sunday, or Federal holiday, the filing time is automatically extended to the end of the next Federal working day.

(3) It is the responsibility of those filing an appeal to file the notice of appeal by the end of the filing period. In the event of questions, legible postmarks on a mailed appeal or the time and date imprint on a facsimile appeal will be considered evidence of timely filing. Where postmarks or facsimile imprints are illegible, the Appeal Deciding Officer shall rule on the timeliness of the notice of appeal.

(4) The time period for filing a notice of appeal is not extendable.

(h) *Dismissal without decision.* The Appeal Deciding Officer shall dismiss an appeal and close the record without a decision in any of the following circumstances:

(1) The appellant is not on the timber sale bidders list for the area affected by the recomputation decision;

(2) The appellant's notice of appeal is not filed within the required time period;

(3) The appellant's notice of appeal does not contain responses required by paragraphs (f)(2)(i) through (f)(2)(viii) of this section; or

(4) The appellant did not submit written comments on the proposed decision of the new recomputed shares as described in paragraph (c) of this section.

(i) *Appeal record.* The appeal record consists of the written decision being appealed, any predecisional comments received, any written comments submitted by interested parties, any other supporting data used to make the decision, the notice of appeal, and, if prepared, a responsive statement by the Responsible Official which addresses the issues raised in the notice of appeal. The Responsible Official must forward the record to the Appeal Deciding Officer within 7 days of the date the notice of appeal is received. A copy of the appeal record must be sent to the appellant at the same time.

(j) *Appeal decision.* (1) *Responsive statement for appeal decision.* The Appeal Deciding Officer may request the Responsible Official to prepare a responsive statement. However, if the information in the files clearly demonstrates the rationale for the Responsible Official's decision, then a responsive statement addressing the points of the appeal is not necessary.

(2) *Appeal issue clarification.* For clarification of issues raised in the appeal, the Appeal Deciding Officer may request additional information from either the Responsible Official, the appellant, or an interested party who has submitted comments on the appeal. At the discretion of the Appeal Deciding Officer, an appellant or interested party may be invited to discuss data relevant to the appeal. Information provided to clarify issues or facts in the appeal must be based upon information previously documented in the file or appeal. Any information provided as a result of the Appeal Deciding Officer's request for more information must be made available to all parties, that is, to the Responsible Official, the appellant, and interested parties who have submitted comments on the appeal. All parties will have 5 days after the Appeal Deciding Officer receives the additional information to review and comment on the information, and the appeal decision period will be extended 5 additional days.

(3) *Issuance of final decision.* The Appeal Deciding Officer shall review the decision and appeal record and issue a written appeal decision to the parties within 30 days of the close of the appeal period except that this period must be extended to 35 days when additional information is requested by the Appeal Deciding Officer. The Appeal Officer may affirm or reverse the Responsible Official's decision, in whole or in part. There is no extension of the time period for rendering an appeal decision.

(k) *Implementation of decisions during pendency of appeal.* Recomputation of shares arising from a scheduled 5-year recomputation are effective on April 1 following the end of the 5-year period being considered. If an appeal that may affect the shares for the

next 5-year period is not resolved by the April 1 date, the share decision announced by the Responsible Official must be implemented. If an appeal decision results in a change in the shares, the revised total share of the Small Business Timber Sale Set-aside Program must be accomplished during the remaining portion of the 5-year period.

(l) *Timber sale set-aside policy changes.* Timber purchasers shall receive an opportunity, in accordance with all applicable laws and regulations, to review and comment on significant changes in the Small Business Timber Sale Set-aside Program or policy prior to adoption and implementation.

(m) *Information collection requirements.* The provisions of paragraph (f) of this section specify the information that appellants must provide when appealing decisions pertaining to recomputation of shares. As such, these rules contain information requirements as defined in 5 CFR Part 1320. These information requirements have been approved by the Office of Management and Budget and assigned control number 0596–0141.

Dated: December 29, 1998.

Anne Kennedy,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 99–68 Filed 1–4–99; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA40–1–7338a; FRL–6207–8]

Approval and Promulgation of Implementation Plan Louisiana; Nonattainment Major Stationary Source Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves a revision to the Louisiana State Implementation Plan (SIP), Title 33 of the Louisiana Administrative Code Chapter 5 Section 504, ''Nonattainment New Source Review Procedures.'' This revision was submitted on May 9, 1997, by the Governor of Louisiana to EPA for approval.

This revision allows major stationary sources emitting or having the potential to emit at least 100 tons per year of volatile organic compounds (VOC) to offset emissions within the source by an internal offset ratio of at least 1.3 to 1. If the internal offset condition is met, then the requirement to apply the Lowest Achievable Emission Rate (LAER) shall be lifted. This rule making action is being taken under sections 110, 301, and part D of the 1990 Clean Air Act (Act).

DATES: This action is effective on March 8, 1999, unless adverse or critical comments are received by February 4, 1999. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** (FR) informing the public that this rule will not take effect.

ADDRESSES: Comments may be mailed to Ms. Jole Luehrs, Chief, Air Permits Section, Mailcode 6PD–R, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Copies of the documents relevant to this action are available for public inspection during normal business hours at the above location or at the:

Louisiana Department of Environmental Quality, H. B. Garlock Building, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Tommy S. Stogner of the EPA Region 6 Air Permits Section at (214) 665–8510.

SUPPLEMENTARY INFORMATION:

I. Background of Section 504

This regulation is a revision to Section 504 previously approved on October 10, 1997, by EPA (62 FR 52948). The Governor of Louisiana submitted a revision of Louisiana Administrative Code (LAC) 33:III.504 (Section 504) on May 9, 1997, for EPA approval. This revision was submitted to incorporate provisions to implement Section 182(c)(8) of the Act.

II. Section 504: Incorporation of the Provision of Section 182(c)(8) of the Act

The State of Louisiana adopted this revision to incorporate provisions to implement section 182(c)(8) of the Act which provides a special rule for modifications of sources emitting 100 tons or more of VOCs per year. Affected sources are any major stationary source of VOCs located in an ozone nonattainment area classified as serious, and which emits, or has the potential to emit, 100 tons or more of VOCs per year. Whenever there is any change in emissions of VOCs from any discrete operation, unit, or other pollutant emitting activity at the source, such increase shall be considered a modification for purposes of section 172(c)(5) and section 173(a). This Rule allows the owner or operator of the source to offset the increase by a greater reduction in emissions of VOCs from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1, in lieu of the requirements of section 173(a)(2) concerning the LAER.

III. Requirements of Section 182(f) of the Act

Section 182(f) sets forth the presumption that Nitrogen Oxides (NO_x) are an ozone precursor unless the Administrator makes a finding of nonapplicability or grants a waiver pursuant to criteria contained in that subsection. Specifically, section 182(f) provides that requirements applicable for major stationary sources of VOC shall apply to major stationary sources of NO_x, unless otherwise determined by the Administrator, based upon certain determinations related to the benefits or contribution of NO_x control to air quality, ozone attainment, or ozone air quality. In the revised rule, NO_x has been removed based on a demonstration that additional NO_x reductions would not contribute to attainment of the National Ambient Air Quality Standard for ozone in the nonattainment area.[1]

IV. EPA Analysis

This regulation meets all requirements for major source modifications exempting sources complying with section 182(c)(8) of the Act from the requirements of section 173(a)(2) concerning LAER and is being approved by EPA. For further details regarding this rule, EPA has prepared a Technical Support Document for EPA actions on LAC 33:III.504 for this notice.

V. Final Action

The EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this FR publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective March 8, 1999, without further notice unless the Agency receives relevant adverse comments by February 4, 1999.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and

[1] The EPA previously approved the exemption (under section 182(f) of the Act) of NO_x requirements for the serious ozone nonattainment area of Baton Rouge on January 18, 1996 (see 61 FR 2438) and approved the exemption of nitrogen oxide requirements for the marginal ozone nonattainment area of Lake Charles (Calcasieu Parish) on May 27, 1997 (See 62 FR 29072).

informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 8, 1999 and no further action will be taken on the proposed rule.

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

VI. Administrative Requirements

A. Executive Order (E.O.) 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the FR. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2). This rule will be effective March 8, 1999 without further notice unless the Agency receives relevant adverse comments by February 4, 1999.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 8, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, General conformity, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

Dated: December 8, 1998.

William N. Rhea,

Acting Regional Administrator, Region 6.

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

PART 52—[AMENDED]

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

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

Subpart T—Louisiana

2. In § 52.970 (c), the table is amended under Chapter 5 by revising the entry for section 504 to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE LOUISIANA SIP

State citation	Title/subject	State approval date	EPA approval date	Comments
LAC Title 33. Environmental Quality Part III. Air				
*	*	*	*	*
Chapter 5—Permit Procedures				
*	*	*	*	*
Section 504	Nonattainment New Source Review Procedures.	February 20, 1997	January 5, 1999.	
*	*	*	*	*

[FR Doc. 99–19 Filed 1–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY98–9808a; FRL–6199–1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted on November 10, 1997, by the Commonwealth of Kentucky, through the Kentucky Natural Resources and Environmental Protection Cabinet. This revision modifies the implementation of a basic motor vehicle inspection and maintenance (I/M) program in Jefferson County, Kentucky, to require loaded mode testing of vehicles instead of the current idle testing.

DATES: This final rule is effective March 8, 1999 without further notice unless EPA receives relevant adverse comments by February 4, 1999. Should the EPA receive such comments, it will publish a timely document withdrawing this rule informing the public that the rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Dale Aspy at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file KY98–9808. The Region 4 office may have additional background documents not available at the other locations.

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

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

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

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

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

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act as amended in 1990 (the Act) requires that many ozone nonattainment areas adopt either ''basic'' or ''enhanced'' I/M programs, depending on the severity of the problem and the population of the area. The moderate ozone nonattainment areas, as well as marginal ozone areas with existing or previously required I/M programs, must adopt programs that meet the ''basic'' I/M requirements. Enhanced programs are required in

serious, severe, and extreme ozone nonattainment areas with 1980 urbanized populations of 200,000 or more. On November 5, 1992, EPA promulgated an I/M regulation that establishes minimum performance standards for basic I/M programs as well as other requirements that must be met for the program to be approved in the SIP. The performance standard for basic I/M programs remains the same as it has been since initial I/M policy was established in 1978, pursuant to the 1977 amendments to the Clean Air Act.

The Commonwealth of Kentucky contains the Louisville urbanized area portion of the Louisville ozone nonattainment area which is classified as moderate. The Louisville ozone nonattainment area includes Jefferson County, Kentucky, portions of Bullitt and Oldham Counties, Kentucky, and two counties in Indiana. This notice addresses only the Jefferson County, Kentucky, portion of the nonattainment area.

The I/M program currently in operation in Jefferson County, Kentucky, requires idle testing of a vehicle's emissions and was found to meet all EPA requirements for a basic I/M program. EPA published a notice in the July 28, 1995, **Federal Register** approving the program as meeting all EPA requirements for basic I/M programs. However, the Act also required ozone nonattainment areas such as Louisville to meet several other conditions, including: (1) a 15 percent volatile organic compound (VOC) emission reduction plan; (2) reasonably available control technologies, and (3) an attainment demonstration including any necessary additional reductions sufficient to attain the ozone standard. The Jefferson County, Kentucky, Air Pollution Control District (APCD) determined that reductions beyond those achievable with the basic idle test were needed to meet those additional requirements. They determined that a loaded mode I/M test, in which the vehicle's emissions are measured while the vehicle is on a dynamometer simulating actual driving conditions, would be the most effective emission reduction strategy to meet those additional requirements. The Jefferson County, Kentucky, APCD also determined that an additional emission reduction of 910 tons per year or 2.49 tons per summer day would be achieved through the implementation of loaded mode testing.

On November 10, 1997, the Commonwealth of Kentucky, through the Kentucky Natural Resources and Environmental Protection Cabinet submitted to EPA a revised SIP for an I/M program that would achieve greater emission reductions than the current basic I/M program for Jefferson County. This submittal included revisions to Regulation 8.01, Mobile Source Emissions Control and Regulation 8.02, Vehicle Emissions Testing Procedure. The majority of the changes to these two regulations were minor modifications in the language and numbering of the regulation. The significant revision involved the type of vehicle emission testing required in Jefferson County. Beginning April 1, 1998, all vehicles presented for an emission test in Jefferson County, Kentucky, that are capable of being tested on a dynamometer will be subject to a loaded mode exhaust gas emission test. The loaded mode test adopted and described in Regulation 8.02 is one of the short test procedures contained in EPA's I/M rule, as published on November 5, 1992. The loaded mode procedure is described in Subpart S, Appendix B, Section III of the EPA rule. The I/M regulations were adopted by the Department of Planning and Environmental Management, Air Pollution Control District of Jefferson County, Kentucky, on October 15, 1997.

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

EPA's review of the submitted revisions indicates that the Jefferson County I/M program is in accordance with the requirements of the Act. Modeling analyses were conducted by the Jefferson County APCD using MOBILE5a–H, and demonstrated that additional emission reductions beyond those of a basic idle test would be achieved by implementing a loaded mode exhaust emission test. Since the revised test procedure adopted by the APCD is one of the short test procedures described in Subpart S, Appendix B, Section III of the November 5, 1992 EPA I/M rule, EPA is approving the Kentucky SIP revision for a loaded mode, basic I/M program in Jefferson County.

III. Final Action

EPA is approving this revision to the Kentucky SIP for a basic I/M program in Jefferson County. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse public comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective March 8, 1999 without further notice unless the Agency receives relevant adverse comments by February 4, 1999.

If EPA receives such comments, then EPA will publish a timely document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will be discussed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 8, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997),

applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

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

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 8, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 5, 1998.

A. Stanely Meiburg,

Acting Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

2. Section 52.920, is amended by adding paragraph (c)(88) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(88) Modifications to the existing basic I/M program in Jefferson County to implement loaded mode testing of vehicles submitted by the Commonwealth of Kentucky on November 10, 1997.

(i) Incorporation by reference.

Regulation 8.01 and 8.02, adopted on October 15, 1997.

(ii) Other material. None.

* * * * *

[FR Doc. 99–17 Filed 1–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300748; FRL–6039–4]

RIN 2070–AB78

Picloram; Time-Limited Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for the indirect or inadvertent residues of the herbicide, picloram, 4-amino-3,5,6-trichloropicolinic acid and its potassium salt in or on certain raw agricultural commodities. Dow AgroSciences requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: The effective date of this rule is December 31, 1998. Objections and requests for hearings must be received by EPA on or before March 8, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300748], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300748], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300748]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 13, 1997 (62 FR 26305), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP 4F4412) for tolerances by DowElanco, 9330 Zionsville Road, Indianapolis, IN 46254. This notice included a summary of the petition prepared by DowElanco, the registrant. The petition requested that 40 CFR 180 be amended by establishing tolerances for inadvertent residues of the herbicide, picloram, 4-amino-3,5,6-trichloropicolinic acid, in or on sorghum grain at 0.3 parts per million (ppm), sorghum grain forage at 0.2 ppm, and sorghum stover at 0.5 ppm.

In the **Federal Register** of November 20,1998 (63 FR 64494), EPA issued a notice announcing that Dow AgroSciences amended the petition by also proposing to established a tolerance for residues of the herbicide picloram in or on the raw agricultural commodity aspirated grain fractions at 4 ppm. There were no comments received in response to the notices of filing. The tolerances will expire and will be revoked on December 31, 2000.

I. Risk Assessment and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue***.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed adverse effect level'' or ''NOAEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOAEL from the study with the lowest NOAEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human

exposure into the NOAEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100–fold MOE is based on the same rationale as the 100–fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOAEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration*. The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute'', ''short-term'', ''intermediate term'', and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOAEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from Federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup non-nursing infants was not regionally based.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of picloram and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for indirect or inadvertent residues of picloram and its potassium salt in certain raw agricultural commodities when present therein as a result of the application of picloram as a herbicide. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows:

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by picloram acid

and its salts and esters are discussed below:

1. Rat acute oral studies with LD_{50s} greater than 5,000 milligrams (mg)/kilogram (kg) (males) and 4,012 mg/kg (females) with picloram acid and greater than 5,000 mg/kg (males) and 3,536 mg/kg (females) with the potassium salt of picloram

2. A 13–week rat feeding study with picloram acid with a No Observed Adverse Effect Level (NOAEL) 50 mg/kg/day and with a Lowest Observed Adverse Effect Level (LOAEL) of 150 mg/kg/day based on liver weight increases and minimal microscopic changes in the liver.

3. A 13–week rat feeding study with the isooctyl ester of picloram with a NOAEL 73 mg/kg/day and with a LOAEL of 220 mg/kg/day based on increased liver weights accompanied by slight/very slight hepatocellular hypertrophy and increased kidney weights in males only.

4. A 13–week rat feeding study with the triisopropanolamine salt of picloram with a NOAEL 90 mg/kg/day and with a LOAEL of 550 mg/kg/day based on hepatocellular hypertrophy; decreased body weight gain and increased liver and kidney weights (females only) at 1,800 mg/kg/day.

5. A 6 month dog feeding study with picloram acid with a NOAEL of 35 mg/kg/day and a LOAEL of 175 mg/kg/day based on decreased mean body weight gain and food consumption.

6. A 21–day dermal study with potassium salt of picloram in rabbits with a NOAEL for systemic effects greater than 753 mg/kg/day, the maximum amount of test material that could be practically maintained at the test site - limit of test.

7. A 21–day dermal study with triisopropanolamine salt of picloram in rabbits with a NOAEL for systemic effects greater than 1,320 mg/kg/day - limit of test.

8. A dog chronic feeding study with picloram acid with a NOAEL of 35 mg/kg/day and a LOAEL of 175 mg/kg/day based on increased absolute and relative liver weights.

9. A rat chronic feeding/carcinogenicity study with picloram acid with a systemic NOAEL of 20 mg/kg/day and a systemic LOAEL of 60 mg/kg/day based on increased size and altered staining properties of centrilobular hepatocytes and increased absolute and/or relative liver weights in both sexes. Negative for carcinogenicity.

10. A second rat chronic feeding/carcinogenicity study with picloram acid with a systemic NOAEL less than 250 mg/kg/day and a systemic LOAEL of 250 mg/kg/day based on increases in the incidence and severity of glomerulonephritis, blood in the urine, decreased specific gravity of the urine, increased size of hepatocytes that often had altered staining properties, increase in the incidence of unilateral or bilateral renal papillary necrosis and increases in absolute and relative kidney weights. There was no evidence of increased tumor incidence.

11. A mouse carcinogenicity study with picloram acid with a NOAEL was 500 mg/kg/day and the LOAEL was 1,000 mg/kg/day based on increased absolute and relative kidney weights in males. There was no evidence of carcinogenicity.

12. A two-generation rat reproduction study with picloram acid with a parental systemic NOAEL of 200 mg/kg/day and a reproductive NOAEL of 1,000 mg/kg/day [Highest Dose Tested (HDT)] and a Parental Systemic LOAEL of 1,000 mg/kg/day based on microscopic lesions in male (and some female) kidneys, blood in urine, decreased urine specific gravity, increased absolute and relative kidney weights.

13. A rat developmental study (picloram acid) with a maternal NOAEL of 500 mg/kg/day and a developmental LOAEL of 500 mg/kg/day [Lowest Dose Tested] based on transient delayed ossification of 5th sternebrae (fetuses but not litters) and with a maternal LOAEL of 750 mg/kg/day based on hyperactivity and mild diarrhea and deaths.

14. A rat developmental study with the potassium salt of picloram with a maternal NOAEL of 174 mg/kg/day and a developmental NOAEL of 347 mg/kg/day [HDT] and with a maternal LOAEL of 347 mg/kg/day based on excessive salivation.

15. A rabbit developmental study with the potassium salt of picloram with a maternal NOAEL of 40 mg/kg/day and a developmental NOAEL of 400 mg/kg/day [HDT] and with a maternal LOAEL of 200 mg/kg/day based on reduced maternal weight gain during gestation.

16. A rat developmental study with the isooctyl ester of picloram with a maternal NOAEL of 100 mg/kg/day and a developmental NOAEL of 1,000 mg/kg/day [HDT] and with a maternal LOAEL of 500 mg/kg/day based on decreased body weight gain during early gestation.

17. A rabbit developmental study with the isooctyl ester of picloram with a maternal NOAEL of 20 mg/kg/day and a developmental NOAEL of 500 mg/kg/day [HDT] and with a maternal LOAEL of 100 mg/kg/day based on an increase in incidence of clinical signs (decreased feces at 500 and decreased body weight gain at 100 mg/kg/day and above).

18. A rat developmental study with the triisopropanolamine salt of picloram with a maternal NOAEL of 500 mg/kg/day and a developmental NOAEL of 1,000 mg/kg/day [HDT] and with a maternal LOAEL of 1,000 mg/kg/day based on excessive salivation, decreased body weight gain and food consumption.

19. A rabbit developmental study with the triisopropanolamine salt of picloram with a maternal NOAEL of 54 mg/kg/day and a developmental NOAEL of 1,000 mg/kg/day [HDT] and with a maternal LOAEL of 180 mg/kg/day based on increased rate of abortions at 1,000 mg/kg/day, increased clinical signs at 538 mg/kg/day and above and decreased food consumption and body weight gain at 180 mg/kg/day and above.

20. In a gene mutation assay (Ames assay) picloram acid did not produce a mutagenic response either in the presence or absence of activation. In a gene mutation assay in Chinese hamster ovary (CHO) cells picloram acid was found to be negative for inducing forward mutation with and without metabolic activation. In gene mutation assay with CHO/HGPRT+ cells picloram acid did not induce a mutagenic response at doses up to and including those generally associated with severe cytotoxicity. In a cytogenetics *in vivo* study picloram acid did not produce cytogenetic effects. In an other genotoxic effects study picloram acid was negative for unscheduled DNA synthesis treated up to cytotoxic levels. In a gene mutation assay (Ames test) the isooctyl ester of picloram did not induce a mutagenic response in the presence or absence of metabolic activation. In a gene mutation assay (mammalian CHO cells) isooctyl ester of picloram there was no evidence of a mutagenic response at any dosage level in either the S9 activated trials or the non-activated trials. In a structural chromosomal aberration assay isooctyl ester of picloram demonstrated no potential for inducing chromosomal aberrations. In a micronucleus test in mice the isooctyl ester was found not to be clastogenic. In a gene mutation assay (Ames test) the triisopropanolamine salt of picloram did not produce a mutagenic response either in the presence or absence of activation. In a cytogenetics assay the triisopropanolamine salt of picloram was non-clastogenic in mice, as determined by lack of mutagenic effect at doses up to lethality. In another genotoxic effects assay the triisopropanolamine salt of picloram was negative for inducing unscheduled

DNA synthesis at doses up to toxic levels.

21. A rat metabolism study showed that radio-labeled ^{14}C-picloram acid is rapidly absorbed, distributed and excreted following oral and intra-venous (i.v.) administration. A rat metabolism study demonstrated that isooctyl ester of picloram is hydrolyzed rapidly to picloram (free acid) and 2-ethyl hexanol, and that picloram isooctyl ester does not influence the excretion of picloram in the rat. For the triisopropanolamine salt of picloram, the metabolism study showed that the conversion of the salt to picloram was not affected by the presence of triisopropanolamine.

B. Toxicological Endpoints

1. *Acute toxicity*. EPA could not identify any toxicological effects that could be attributable to a single oral exposure (dose) in any of the available toxicological studies.

2. *Short- and intermediate-term toxicity*. EPA could not identify any toxicological effects that could be attributable to short- or intermediate-term dermal or inhalation exposure. No systemic effects were observed in available dermal studies. In addition, no endpoints for short- or intermediate-term exposure could be identified from available oral studies.

3. *Chronic toxicity*. EPA has established the RfD for picloram at 0.2 mg/kg/day. This RfD is based on NOAEL of 20 mg/kg/day in the combined chronic toxicity/carcinogenicity study in rats with a 100–fold safety factor to account for inter-species extrapolation (10x) and intra-species variability (10x).

4. *Carcinogenicity*. The Health Effects Division Carcinogenicity Peer Review Committee has classified picloram acid and its potassium salt as Group E ''no evidence of carcinogenicity'' to humans based on the lack of carcinogenicity in rats and mice. A carcinogenicity risk assessment is required for hexachlorobenzene (HCB) a process impurity in picloram.

C. Exposures and Risks

1. *From food and feed uses*. Tolerances have been established (40 CFR 180.292) previously for the residues of picloram, and its salts in or on raw agricultural commodities from use on barley, grasses, oats and wheat. Appropriate tolerances are established for secondary residues of picloram and its salts occurring in meat, milk, poultry, or eggs. Risk assessments were conducted by EPA to assess dietary exposures and risks from picloram from the proposed and registered uses as follows:

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. No toxicological effect that could be attributable to a single oral exposure was identified, and therefore picloram is not expected to present an acute dietary risk.

ii. *Picloram chronic exposure and risk*. The Reference Dose (RfD) for picloram is 0.02 mg/kg/day. This value is based on the systemic LOAEL of 200 mg/kg/day in the rat chronic feeding/carcinogenicity study with a 100–fold safety factor to account for interspecies extrapolation (10x) and intraspecies variability (10x). start

A Dietary Risk Evaluation System (DRES) chronic exposure analysis was conducted using established tolerance levels for proposed tolerances, meat, milk and eggs, and percent crop treated information for cereal grains to estimate dietary for the general population and 22 subgroups. The chronic analysis showed that dietary exposure for non-nursing infants (the subgroup with the highest exposure) would be 2% of the Reference Dose (RfD). The exposure for the general U.S. population would be less than 1% of the RfD.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: (1) That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; (2) that the exposure estimate does not underestimate exposure for any significant subpopulation group; and (3) if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used.

The Agency used percent crop treated (PCT) information as follows. A routine chronic dietary exposure analysis for picloram was based on 2% of cereal grain crop treated. The Agency believes that the three conditions listed above have been met. With respect to (1), EPA finds that the (PCT) information described above for picloram used on cereal grains is reliable and has a valid basis based on past pesticide use surveys. Approval of crop rotation of the minor use corp sorghum after treatment with picloram is not likely to significant increase the percentage of the total U.S. cereal grains treated with picloram. As to (2) and (3), regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which picloram may be applied in a particular area.

iii. *HCB (hexachlorobenzene) chronic exposure and risk*. EPA calculated the chronic dietary carcinogenic risk from all known pesticidal sources of HCB, including picloram. Eight pesticides were included in the calculations, three of which were major contributors to HCB levels in the diet: chlorothalonil, pentachloronitrobenzene and picloram. The estimated dietary carcinogenic risk for HCB from all known pesticidal sources is 6.3×10^{-7} which is less than the 1×10^{-6} point which is generally considered to be negligible.

2. *From drinking water*- i. *Acute risk*. Because no acute dietary endpoint was determined, no acute risk is expected.

ii. *Chronic risk*. Based on the chronic dietary (food) exposure and using default body weights and water consumption figures [70 kg weight/2L water consumed (adult male), 60 kg/2L (adult female), and 10 kg/1L (child)], the chronic drinking water levels of concern (DWLOC) for drinking water were calculated. To calculate the DWLOC, the chronic dietary food exposure was subtracted from the RfD.

$DWLOC_{chronic}$ = [chronic water exposure (mg/kg/day) x (body weight)]/[consumption (L) x 10^{-3} mg/μg]

where chronic water exposure (mg/kg/day) = [RfD - (chronic food + residential exposure) (mg/kg/day)]

The results are summarized in the following Table:

Population Subgroup[1]	Chronic Scenario					
	RfD mg/kg/day	Food Exposure mg/kg/day	Maximum Water Exposure mg/kg/day[2]	DWLOC (µg/L)	SCI-GROW2 EEC (µg/L)[3]	GENEEC EEC (µg/L)[3]
U.S. Population	0.20	0.0011	0.20	7000	379	103.1
Females (13–19 years old, not pregnant or nursing)	0.20	0.00090	0.20	6000	379	103.1
Non-Nursing Infants (< 1yr old)	0.20	0.0043	0.20	2,000	379	103.1

[1] Population subgroups chosen were U.S. population (70 kg. body weight assumed), the adult female subgroup with the highest food exposure (60 kg. body weight assumed) and the infant/child subgroup with the highest food exposure (10 kg. body weight assumed).
[2] Maximum Water Exposure (mg/kg/day) = RfD (mg/kg/day) - ARC from DRES (mg/kg/day).
[3] The crop producing the highest level was used.

For the most highly exposed populations subgroup, non-nursing infants (< 1 year old), chronic dietary (food only) exposure occupies 2% of the RfD. The chronic drinking water level of concern (DWLOC) for non-nursing infants (< 1 yr old) is 2,000 µg/L (ppb). The GENEEC model predicted that with the present use pattern, the 56–day average picloram surface water concentration for the highest application rate (2 lbs/A) would be 103.1 µg/L (ppb). The SCI-GROW2 model estimated that the ground water concentration from the current uses of picloram for the highest application rate would be 379 µg/L (ppb). Therefore, exposure from water is below DWLOC for chronic dietary exposure for any of the populations examined.

iii. *Dietary cancer risk for hexachlorobenzene (HCB) - (combined food and water).* HCB is persistent and relatively immobile in the environment. Based on the high binding potentials of HCB, contamination of ground water resources is relatively unlikely. The dietary cancer risk for HCB from all pesticidal uses is 6.3×10^{-7}. In order to calculate a DWLOC for HCB, the Anticipated Residue Contribution (ARC's) for each of the pesticides included in the risk calculation are needed. Although a few significant figures are lost with this calculation, an estimate of the overall dietary exposure can be made by dividing the risk value by the Q*. The calculation is as follows: $(6.3 \times 10^{-7}/1.02 = 6.2 \times 10^{-7})$. Based on summaries of monitoring data and fate properties, long term concentrations of HCB in filtered surface water are not likely to exceed 10 ppt or 0.01 ppb. The amount of HCB in water is also estimated from uses of other chemicals with HCB as an impurity, not just picloram. The chronic water exposure is calculated by dividing the negligible risk (1.0×10^{-6}) by the Q* and subtracting from that the chronic food plus residential exposure. $1.0 \times 10^{-6}/1.02$ mg/kg/day^{-1} = 9.8×10^{-7} mg/kg/day. Using the equation for calculating the DWLOC (ppb), the DWLOC for the general population for dietary cancer risk for HCB from all pesticidal uses is calculated as follows:

9.8×10^{-7} mg/kg/day x 70kg/2L x 10^{-3} mg/µg = 0.034 µg/L (ppb)

The DWLOC of 0.034 ppb is greater than 0.01 ppb, the maximum concentration of HCB estimated in surface water.

3. *From non-dietary exposure.* Picloram is a Restricted Use Pesticide that has no residential uses. For uses currently registered under the Federal Insecticide, Fungicide and Rodenticide Act, rights-of-way, forestry, pastures, range lands, and small grains; entry into a treated area soon after the application of picloram is limited by the re-entry restrictions on the picloram labels. Non-dietary exposure to picloram will be minimal for the general population.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Picloram is a pyridine carboxylic acid herbicide. Other herbicides in this class include clopyralid, quinclorac and thiazopyr.

EPA does not have, at this time, available data to determine whether picloram has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, picloram does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that picloram has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Picloram is not expected to pose an acute risk.

2. *Chronic risk.* The Reference Dose (RfD) for picloram is 0.02 mg/kg/day. This value is based on the systemic LOAEL of 200 mg/kg/day in the rat chronic feeding/carcinogenicity study with a 100–fold safety factor to account for interspecies extrapolation (10x) and intraspecies variability (10x). The dietary exposure for non-nursing infants (the subgroup with the highest exposure) is 2% of the Reference Dose (RfD). The exposure for the general U.S. population would be less than 1% of the RfD.

The drinking water level of concerns (DWLOCs) for chronic exposure to picloram in drinking water calculated for U.S. population was 7,000 parts per billion (ppb) assuming that an adult weighs 70 kg and consumes a maximum of 2 liters of water per day, for females 13–19 years old (not pregnant or nursing) the DWLOC was 6,000 assuming that an adult female weighs 60 kg and consumes a maximum of 2 liters of water per day, and for children (1 – 6 years old) the DWLOC was 2,000 ppb assuming that a child weighs 10 kg and consumes a maximum of 1 liter of water per day.

The drinking water estimated concentration (DWECs) for groundwater (picloram acid) calculated from the highest application rate for the 56 day average is 379 ppb which does not exceed DWLOC of 2,000 ppb for children (1–6 years old). The DWEC for surface water based on the computer model Generic Expected Environmental Concentration (GENEEC) was calculated to be 103.1 ppb for chronic concentration (parent picloram and degradate thiadone) which does not exceed the DWLOC of 2,000 ppb for children (1–6 years old). From

groundwater monitoring the maximum concentration reported was 4.6 ppb. Picloram is regulated under the Safe Drinking Water Act (SDWA). Water supply systems are required to sample for it. A Maximum Contaminate Level (MCL) of 500 ppb and a 1–10 day health advisory of 20,000 ppb have been established.

EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to picloram residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of picloram, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. There is no indication of increased sensitivity to young rats or rabbits following pre- and/or post-natal exposure to picloram in the standard developmental and reproductive toxicity studies, there was no indication that picloram is a neurotoxic herbicide. Therefore, a 10–fold safety factor for children and infants is not required to be used in the aggregate dietary acute and chronic risk assessments.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in rotated sorghum is adequately understood. The residues of concern for the tolerance expression are picloram and its salts. Appropriate tolerances are established to cover any secondary residues which would occur in animal commodities from the proposed and registered uses.

B. Analytical Enforcement Methodology

An adequate analytical method, gas chromatography/mass spectrometry with selected ion monitoring, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 101FF, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–305–5229).

C. Endocrine Effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other effect***.'' The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

D. Magnitude of Residues

Due to the data gap, an aspirated grain fraction study; EPA believes it is inappropriate to establish permanent tolerances for the proposed use of picloram at this time. EPA believes that the existing data support tolerances to December 31, 2000. The nature of the residue in plants is adequately understood for the purposes of these tolerances.

E. International Residue Limits

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for picloram.

F. Rotational Crop Restrictions

Tolerances for indirect or inadvertent residues of picloram and its potassium salt established by this regulation will cover any residues in sorghum planted in treated fields in accordance with the restrictions that appear on the labeling proposed for registration under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), as amended.

IV. Conclusion

The analysis for picloram and its salts using crop tolerances, percentage of crop estimates, and estimated drinking water concentrations for all population subgroups examined by EPA shows the proposed rotation to sorghum from the registered uses of picloram will not cause exposure at which the Agency believes there is an appreciable risk during the period of time for the tolerance. Therefore EPA concludes there is a reasonable certainty of no harm from aggregate exposure to picloram. Based on the information cited above, EPA has determined that establishing tolerances for the residues of the herbicide, picloram in or on aspirated grain fractions at 4.0 ppm, sorghum grain at 0.3 ppm, sorghum grain forage at 0.2 ppm and sorghum grain stover at 0.5 ppm will be safe. These tolerances will expire and be revoked on December 31, 2000. Therefore, the tolerances are established as set forth below.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by March 8, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i) or a request for a fee waiver. If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any

evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300748]. 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 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

Business Regulatory Enforcement Fairness Act of 1996, generally provides that

before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 22, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. In Part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. Section 180.292 is amended by designating the existing text as paragraph (a), adding a paragraph heading and designating the text following the paragraph heading as paragraph (a)(1); by adding and reserving with headings paragraphs (b) and (c); and by adding paragraph (d) to read as follows:

§ 180.292 Picloram; tolerances for residues.

(a) *General.* (1) * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* Tolerances are established for indirect or indadvertent residues of the herbicide picloram, 4-amino-3,5,6-trichloropicolinic acid, from application of its potassium form on barley, fallow cropland, oats, and wheat in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration/ Revocation Date
Aspirated grain fractions	4.0	12/31/00
Sorghum grain	0.3	12/31/00
Sorghum grain, forage	0.2	12/31/00
Sorghum grain, stover	0.5	12/31/00

PART 185–[AMENDED]

2. In Part 185:

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.4850—[Partially Redesignated and Removed]

b. The text of § 185.4850, including the table, is redesignated as paragraph (a)(2) of § 180.292. The remainder of § 185.4850 is removed.

PART 186–[AMENDED]

3. In Part 186:

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 371.

§ 186.4850 [Partially Redesignated and Removed]

b. The text of § 186.4850, including the table, is redesignated as paragraph (a)(3) of § 180.292. The remainder of § 186.4850 is removed.

[FR Doc. 98–34830 Filed 12–31–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Parts 653 and 654

[Docket No. FTA–98–3474]

RIN 2132–AA61

''Maintenance'' Under Definition of Safety-Sensitive Functions in Drug and Alcohol Rules

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Transit Administration (FTA) is amending its regulations to require drug and alcohol testing of all maintenance workers, including those engaged in engine, revenue service vehicle, and parts rebuilding and overhaul. This change will eliminate the distinction between maintenance workers involved in on-going, daily maintenance and repair work and those who, on a routine basis, perform rebuilding and overhauling work.

EFFECTIVE DATE: February 4, 1999.

FOR FURTHER INFORMATION CONTACT: For program issues: Judy Meade, Director of the Office of Safety and Security (202) 366–2896 (telephone) or (202) 366–7951 (fax). For legal issues: Michael Connelly, Office of the Chief Counsel (202) 366–4011 (telephone) or (202) 366–3809 (fax). Electronic access to this and other rules may be obtained through FTA's Transit Safety Bulletin Board at 1–800–231–2061, or through the FTA World Wide Web home page at http://www.fta.dot.gov; both services are available seven days a week.

SUPPLEMENTARY INFORMATION: On March 2, 1998, FTA published a Notice of Proposed Rulemaking (NPRM) proposing to amend its drug and alcohol rules to require testing all maintenance workers, including those engaged in engine, revenue service, and parts rebuilding and overhaul. The NPRM came in response to concern that FTA was permitting a segment of workers who routinely performed safety-sensitive functions to evade otherwise applicable drug and alcohol testing. FTA received 11 comments over a three-month period.

I. ''Maintenance''

Comments

Of the 11 comments received, seven favored adoption of the proposed amendment; four commenters opposed. Those in favor of the amendment noted that employees performing routine repair and those performing overhaul and rebuilding should be treated similarly. The workers performing those tasks are drawn, generally, from the same pool of applicants, and perform equally important tasks. Those opposed to the amendment generally focused on a perceived increased cost in securing contractors able to perform overhaul and rebuilding functions. Comments on the NPRM, as well as suggestions from those generally in favor of the amendment, include:

—Three commenters (Bloomington-Normal (Illinois) Public Transit System (B–NPTS)), the Bay Area (California) Transit Drug Testing Task Force, and the Los Angeles County Metropolitan Transportation Authority (LACMTA) expressed concern that ''extending'' testing to contract maintenance workers would increase the cost to both the grantee and the contractor. The Task Force and LACMTA both suggest that some of their overhaul and rebuilding

work occurs on an irregular, ''as needed'' basis. The B–NPTS suggests that its contractor should certify those workers who perform maintenance and overhaul work, and subject only those workers to the testing rules.

—New Flyer of America, Inc., an original equipment manufacturer (OEM), believes the FTA should extend its present exemption for OEM work performed under warranty, to any work performed by an OEM, whether under warranty or not. New Flyer suggests that differentiating between OEM warranty and non-warranty work is an ''artificial distinction'' posing ''substantial cost'' on OEMs that perform overhaul and rebuilding maintenance work.

—The Washington Metropolitan Area Transit Authority (WMATA) favors adoption of the rule. It further suggests that FTA add the phrase ''employees and contractors'' to the definition of safety-sensitive employees and delete the word ''on-going'' before the word ''repairs.''

Discussion

When these rules were first considered in the early 1990s, and published in February 1994, FTA's underlying assumption was that all maintenance workers who performed a safety-sensitive function would be subject to the rules. As noted in the March 1998 NPRM and below, the 1994 Regulatory Impact Analysis assumed all maintenance workers would be covered by the regulation; at that time, no distinction was made between routine and ''less routine'' maintenance. In November 1994, the FTA, through a letter of interpretation, created an exemption to the rules' general applicability. Under the exemption, workers performing daily, ''routine'' maintenance would still be subject to the rule, while those performing what the FTA described as ''less routine'' work, such as rebuilding and overhauling, were exempt. With this final rule, FTA reverses its position, because to do so is pro-safety (all maintenance workers that perform safety-sensitive work should be subject to the rules) and because similarly situated maintenance workers will be treated equally.

FTA disagrees with the concerns expressed by the Task Force and LACMTA. It is not acceptable that contractors, when performing safety-sensitive work in furtherance of pubic safety, should be exempt from the rules simply because they are contractors. As noted above, a goal of this rule is to treat similarly situated employees equally. LACMTA and the Task Force would have the FTA treat the grantee's own employees, or a contractor's employees that perform routine work, differently than a contractor's employee performing rebuilding and overhaul work. Because both kinds of work (on-going routine maintenance and rebuilding/overhaul) are safety-sensitive, we see no reason to distinguish the two.

We agree, though, that if the overhaul/rebuilding work is done on an ad hoc or one-time basis, where there is no long-term contract between the grantee and its contractors, subjecting the contractor's employees to the rules would be unduly burdensome.

FTA disagrees with New Flyer's request that we exempt OEMs completely from the rules, while requiring other maintenance and rebuilding workers and contractors to comply with the rules. We also decline to act on the Amalgamated Transit Union's request that FTA remove the present OEM warranty exemption. We believe the exemption to be a balance between the needs of OEMs to control costs, while at the same time, promoting the safety of the riding public.

FTA intends to keep the phrase ''on-going'' in the definition, as it appropriately describes the category of repair subject to the rules (on-going, daily repair). As to the suggestion that the definition of safety-sensitive include the phrase ''employees and contractors,'' we note that the rules describe safety-sensitive functions; the rules do not define safety-sensitive persons.

II. Regulatory Analysis and Notices

This is not a significant rule under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. There are no significant Federalism implications to warrant preparation of a Federalism Assessment. The Regulatory impact Analysis used for the original 1994 rules assumed that all maintenance workers would be covered by the rules. By interpretation in 1994, FTA created a limited exemption from testing for safety-sensitive workers who performed ''less routine'' maintenance such as rebuilding and overhauling engines, parts, and revenue service vehicles. We now eliminate that exemption. Therefore, the Department certifies that this rule will not have a significant economic impact on a substantial number of transit systems; this rule merely restores maintenance workers who overhaul and rebuild engines, parts, and revenue service vehicles to the pool of safety-sensitive workers to be tested. This rule does not contain new information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. The agency has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking; this rule will cost State, local and tribal governments less than $100 million annually.

List of Subjects in 49 CFR Parts 653 and 654

Alcohol testing, Drug testing, Grant programs-transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Safety-sensitive, Transportation.

For the reasons set forth in the preamble, FTA is amending Title 49 Code Federal Regulations, parts 653 and 654 as follows:

PART 653—PREVENTION OF PROHIBITED DRUG USE IN TRANSIT OPERATIONS

1. The authority citation for part 653 continues to read as follows:

Authority: 49 U.S.C. 5331, 49 CFR 1.51.

§ 653.7 [Amended]

2. Section 653.7 is amended by revising paragraph (4) in the definition of ''safety-sensitive function'' to read as follows:

§ 653.7 Definitions.

* * * * *

*Safety-Sensitive Function** * *

(4) Maintaining (including repairs, overhaul, and rebuilding) a revenue service vehicle or equipment used in revenue service, unless the recipient receives funding under 49 U.S.C. 5309, is in an area less than 50,000 in population and contracts out such services, or funding under 49 U.S.C. 5311 and contracts out such services.

* * * * *

PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

1. The authority citation for part 654 continues to read as follows.

Authority: 49 U.S.C. 5331, 49 CFR 1.52.

2. Section 654.7 is amended by revising paragraph (4) in the definition of ''safety-sensitive function'' to read as follows:

§ 654.7 Definitions.

* * * * *

*Safety-Sensitive Function** * *

(4) Maintaining (including repairs, overhaul, and rebuilding) a revenue

service vehicle or equipment used in revenue service, unless the recipient receives funding under 49 U.S.C. 5309, is in an area less than 50,000 in population and contracts out such services, or funding under 49 U.S.C. 5311 and contracts out such services.

* * * * *

Issued on: December 23, 1998.

Gordon J. Linton,

Administrator.

[FR Doc. 99–111 Filed 1–4–99; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 122398E]

Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fishery; Minimum Clam Size for 1999

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

ACTION: Notice of suspension of surf clam minimum size limit.

SUMMARY: NMFS informs the public that the minimum size limit of 4.75 inches (12.065 cm) for Atlantic surf clams is suspended for the 1999 fishing year. The intended effect is to relieve the industry from a regulatory burden that is not necessary as the majority of surf clams harvested are larger than the minimum size limit.

DATES: January 1, 1999, through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: David Gouveia, Fishery Management Specialist, 978-281-9280.

SUPPLEMENTARY INFORMATION: Federal regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) allow the Regional Administrator, Northeast Region, NMFS (Regional Administrator), to suspend annually by publication of an announcement in the **Federal Register**, the minimum size limit for Atlantic surf clams (50 CFR 648.72(c)). This action may be taken unless discard, catch, and survey data indicate that 30 percent of the Atlantic surf clam resource is smaller than 4.75 inches (12.065 cm) and the overall reduced size is not attributable to beds where growth of the individual clams has been reduced because of density-dependent factors.

At its August meeting, the Mid-Atlantic Fishery Management Council (Council) accepted the recommendations of its Surf Clam/Ocean Quahog Committee and voted to recommend that the Regional Administrator suspend the minimum size limit for surf clams in 1999. Commercial surf clam shell length data for 1998 indicate that only 11.3 percent of the samples were composed of surf clams that were less than 4.75 inches (12.07 cm). Based on these data, the Regional Administrator adopts the Council's recommendation and publishes this announcement to suspend the minimum size limit for Atlantic surf clams for the period January 1, 1999, through December 31, 1999.

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

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

Dated: December 29, 1998.

Gary C. Matlock,

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

[FR Doc. 98–34834 Filed 12–30–98; 3:06 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222313–8320–02; I.D. 122898C]

Fisheries of the Exclusive Economic Zone Off Alaska; Closures of Specified Groundfish Fisheries in the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is closing specified groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the prohibited species bycatch allowances and directed fishing allowances specified for the 1999 interim total allowable catch (TAC) amounts.

DATES: Effective 0001 hrs, Alaska local time (A.l.t.), January 1, 1999, until superseded by the notice of Final 1999 Harvest Specification for Groundfish, which will be published in the **Federal Register**.

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

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

In accordance with § 679.20(d), if the Administrator, Alaska Region, NMFS (Regional Administrator) determines that the amount of a target species or ''other species'' category apportioned to a fishery will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district (§ 697.20(d)(1)(iii)). Similarly, under § 679.21(e), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, or *C. bairdi* Tanner crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

NMFS will publish interim 1999 harvest specifications for these groundfish fisheries in the January 4, 1999, publication of the **Federal Register**. The Regional Administrator has determined that the interim TAC amounts of the following species will be reached and will be necessary as incidental catch to support other anticipated groundfish fisheries prior to the time that final specifications for groundfish are likely to be in effect for the 1999 fishing year. Consequently, in accordance with § 679.20(d)(i), the Regional Administrator establishes these interim TAC amounts as directed fishing allowances.

Pollock: Bogoslof District
Pacific ocean perch: Bering Sea subarea
''Other rockfish'': Bering Sea subarea
''Other red rockfish'': Bering Sea subarea
Sharpchin/northern rockfish: Aleutian Islands subarea
Shortraker/rougheye rockfish: Aleutian Islands subarea
''Other rockfish'': Aleutian Islands subarea

Further, the Regional Administrator finds that these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d), NMFS is prohibiting directed fishing for these species in the specified areas. In addition, the interim BSAI halibut bycatch allowance specified for the trawl rockfish fishery and the trawl Greenland turbot/arrowtooth flounder/sablefish fishery categories, defined at § 679.21(e)(3)(iv)(C) and (D), is 0 mt. In accordance with § 679.21(e)(7)(iv), therefore, NMFS is prohibiting directed fishing for the following species:

Rockfish by vessels using trawl gear: BSAI

Greenland turbot/arrowtooth flounder/sablefish by vessels using trawl gear: BSAI

These closures will be in effect beginning at 0001 hours, A.l.t., January 1, 1999, until superseded by the notice of Final 1999 Initial Harvest Specifications for Groundfish.

The maximum retainable bycatch amounts at § 679.20 (e) and (f) apply at any time during a fishing trip while these closures are in effect. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679. Refer to § 679.2 for definitions of areas. In the BSAI, ''Other rockfish'' includes *Sebastes* and *Sebastolobus* species, except for Pacific ocean perch and the ''other red rockfish'' species. ''Other red rockfish'' includes shortraker, rougheye, sharpchin, and northern rockfish.

NMFS may implement other closures under the interim specifications, at the time the notice of Final 1999 Initial Harvest Specifications are implemented or during the 1999 fishing year, as necessary for effective conservation and management.

Classification

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

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the interim 1999 harvest specifications for groundfish for the BSAI. It must be implemented immediately to prevent overharvesting the 1999 interim TAC of several groundfish species in the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The fleet will begin to harvest groundfish on January 1, 1999. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

Dated: December 29, 1998.

Gary C. Matlock,

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

[FR Doc. 98–34832 Filed 12–30–98; 3:06 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222314–8321–02; I.D. 122898B]

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

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

ACTION: Closure.

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

DATES: Effective 0001 hrs, Alaska local time (A.l.t.), January 1, 1999, until superseded by the notice of Final 1999 Harvest Specification for Groundfish, which will be published in the **Federal Register**.

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

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

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

NMFS will publish interim 1999 harvest specifications for these groundfish fisheries in the January 4, 1999, publication of the **Federal Register**. The Regional Administrator has determined that the following interim TAC amounts will be reached and are necessary as incidental catch to support other anticipated groundfish fisheries prior to the time that final specifications for groundfish are likely to be in effect for the 1999 fishing year:

Thornyhead rockfish: entire GOA

Atka mackerel: entire GOA

Sablefish: entire GOA

Shortraker/rougheye rockfish: entire GOA

Deep-water flatfish: Western Regulatory Area

Northern rockfish: Eastern Regulatory Area

''Other rockfish'': Western and Central Regulatory Area

Consequently, in accordance with § 679.20(d)(i), the Regional Administrator establishes these interim TAC amounts as directed fishing allowances.

Further, The Regional Administrator finds that these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d), NMFS is prohibiting directed fishing for these species in the specified areas.

These closures will be in effect beginning at 0001 hours, A.l.t., January 1, 1999, until superseded by the notice of Final 1999 Initial Harvest Specifications for Groundfish.

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

NMFS may implement other closures under the interim specifications, at the time the notice of Final 1999 Initial Harvest Specifications are implemented,

or during the 1999 fishing year, as necessary for effective conservation and management.

Classification

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

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the interim 1999 harvest specifications for groundfish for the GOA. It must be implemented immediately to prevent overharvesting the 1999 interim TAC of several groundfish species in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet will begin to harvest groundfish on January 1, 1999. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

Dated: December 29, 1998.

Gary C. Matlock,

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

[FR Doc. 98–34831 Filed 12–30–98; 3:06 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 64, No. 2
Tuesday, January 5, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV99–981–1 PR]

Almonds Grown in California; Revision of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on a revision to the administrative rules and regulations of the California almond marketing order (order) pertaining to reporting requirements. This rule also announces the Agricultural Marketing Service's (AMS) intention to request a revision to the currently approved information collection requirements issued under the order. The almond marketing order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). Under the terms of the order, almond handlers are required to report to the Board, on ABC Form 1, the total adjusted kernel weight of almonds received by them for their own account within seven prescribed reporting periods per year. This rule would change the reporting procedures to require handlers to report this information to the Board monthly, or 12 times per year. Additional, more accurate and timely information would thus be available to the Board and industry, facilitating improved decision making and program administration.

DATES: Comments must be received by March 8, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632; or E-mail: moabdocket__clerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 690–3919, Fax: (202) 205–6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 205–6632, or E-mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the ''order.'' The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This proposal invites comments on a revision to the administrative rules and regulations pertaining to reporting requirements under the California almond order. This rule would change the reporting procedures to require handlers to report their receipts of almonds from growers on a monthly basis rather than seven times per year as currently prescribed. This proposal was unanimously recommended by the Board at a meeting on September 16, 1998.

Section 981.72 of the order provides authority for the Board to require handlers to report to the Board their receipts of almonds from growers. Section 981.472 of the order's administrative rules and regulations currently requires that each handler report to the Board, on ABC Form 1, the total adjusted kernel weight of almonds, by variety, received by it for its own account within seven prescribed reporting periods per year. The report must be submitted to the Board by the 5th calendar day after the close of the following applicable periods—August 1 to August 31; September 1 to September 30; October 1 to October 31; November 1 to November 30; December 1 to December 31; January 1 to March 31; and April 1 to July 31.

The crop year under the almond order runs from August 1 through July 31 of the following year. Most almonds are harvested by growers and received by handlers during the fall months. Thus, handlers have been required to report their almond receipts to the Board on a monthly basis from August through December, and then just twice for the remainder of the crop year.

California almond production has increased significantly in recent years. Between 1983 and 1992, the average size of the almond crop was about 465 million pounds. Since 1992, the average size of the almond crop has grown to about 570 million pounds. With the increase in crop size, more almonds than anticipated are being received by handlers from January through July. Information collected from handlers on the amount of almonds received reflects crop size which provides a basis for the industry's marketing decisions. Thus, the Board recommended that handlers be required to report the amount of almonds received on a monthly basis, or 12 times per year. This reporting change would provide the Board with additional, more accurate and timely information which would facilitate improved decision making and program administration. Appropriate changes would be made to § 981.472 of the order's administrative rules and regulations.

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

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

There are approximately 115 handlers of California almonds who are subject to regulation under the order and approximately 7,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CAR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Currently, about 58 percent of the handlers ship under $5,000,000 worth of almonds and 42 percent ship over $5,000,000 worth on an annual basis. In addition, based on acreage, production, and grower prices reported by the National Agricultural Statistics Service, and the total number of almond growers, the average annual grower revenue is approximately $156,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities.

This rule would revise § 981.472 of the order's administrative rules and regulations to specify that handlers must submit reports concerning receipts of almonds, on ABC Form 1, on a monthly basis, as opposed to seven times per year. Additional, more accurate and timely information would thus be available to the Board and industry, facilitating improved decision making and program administration.

Requiring handlers to submit this information monthly would impose an additional reporting burden on both small and large handlers. It is estimated that it takes a handler 15 minutes to complete a receipt report, or ABC Form 1. Currently, handlers must submit seven such reports annually creating an estimated total burden per handler of 1.75 hours per year, or a total industry burden of approximately 201.25 hours per year. Requiring handlers to submit five additional reports per year would create an additional burden per handler of 1.25 hours per year, or an additional total industry burden of approximately 143.75 hours per year. Although this action would create an additional burden on California almond handlers, the benefits of collecting additional, more accurate and timely information far outweigh the estimated increased reporting burden. The Board would be able to utilize this information to make improved marketing decisions. This rule would not place any additional burden on almond growers. Finally, as with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule are being submitted to the Office of Management and Budget (OMB) for approval. This rule would not become effective until this additional information collection is approved by the OMB. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

Other alternatives to this proposed action include not changing the reporting requirement concerning almond receipts. However, this alternative would leave the Board with less timely information. Another alternative would be to revert back to the reporting requirement prior to 1993 when handlers were required to report almond receipts twice a month during harvest (July through November), once during December, and then twice for the remainder of the crop year. However, the Board believes that requiring handlers to submit the receipt report monthly would best meet the industry's informational needs at this time.

The Board's meeting was widely publicized throughout the almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the September 16, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of ten members, of which five are producers and five are handlers.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board's Administrative and Finance Committee met on September 16, 1998, prior to the Board meeting, and discussed this issue. That committee meeting was also a public meeting, and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the AMS announces its intention to request a revision to a currently approved information collection for almonds grown in California.

Title: Almonds Grown in California, Marketing Order 981.

OMB Number: 0581–0071.

Expiration Date of Approval: August 31, 1999.

Type of Request: Revision of a currently approved information collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the California almond marketing order program, which has been operating since 1950.

On September 16, 1998, the Board unanimously recommended to increase the reporting frequency for ABC Form 1, Report of Receipts (§§ 981.72 and 981.472 (a)). Under the current terms of the order, almond handlers are required to report to the Board, on ABC Form 1, the total adjusted kernel weight of almonds received by them for their own account within seven prescribed reporting periods per year. This change

in reporting procedures would require handlers to report information to the Board monthly, or 12 times per year. Additional, more accurate and timely information would thus be available to the Board and industry, facilitating improved decision making and program administration. This form will be completed by 115 handlers regulated under the marketing order. The time required to complete this form is estimated to average 15 minutes per response. Using this form increases the estimated total annual burden on handlers by 144 hours, from 201 to 345 hours. Also, the number of total annual responses supplied by handlers for the entire almond information collection under the order increases from 6,022 to 6,597.

These forms require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized employees of the Board. Authorized Board employees and the industry are the primary users of the information and AMS is the secondary user.

This proposed revision to the currently approved information requirements issued under the order is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.401 hours per response.

Respondents: California almond growers, handlers, and accepted users of inedible almonds.

Estimated Number of Respondents: 7,658.

Estimated Number of Responses per Respondent: .86.

Estimated Total Annual Burden on Respondents: 2,656 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) 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) 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 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.

Comments should reference OMB No. 0581–0071 and the California Almond Marketing Order No. 981, and be sent to USDA in care of the docket clerk at the address referenced above. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this proposal will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

A 60-day comment period is provided to allow interested persons to respond to this proposal.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CAR part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 981.472, paragraph (a) is revised to read as follows:

§ 981.472 Report of almonds received.

(a) Each handler shall report to the Board, on or before the 5th calendar day of each month, on ABC Form 1, the total adjusted kernel weight of almonds, by variety, received by it for its own account for the preceding month.

* * * * *

Dated: December 28, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–34 Filed 1–4–99; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–64]

Atlantic City Electric Company, Austin Energy, Central Maine Power Company, Delmarva Power & Light Company, South Mississippi Electric Power Association, and Washington Electric Cooperative, Inc.; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Atlantic City Electric Company, Austin Energy, Central Maine Power Company, Delmarva Power & Light Company, South Mississippi Electric Power Association, and Washington Electric Cooperative, Inc. (petitioners). The petition has been docketed by the Commission and has been assigned Docket No. PRM–50–64. The petitioners are all non-operating joint owners of nuclear plants who have concerns about potential safety impacts that could result from economic deregulation and restructuring of the electric utility industry. The petitioners are requesting that the enforcement provisions of NRC regulations be amended to clarify NRC policy regarding the potential liability of joint owners if other joint owners become financially incapable of bearing their share of the burden for safe operation or decommissioning of a nuclear power plant.

DATES: Submit comments by March 22, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

For a copy of the petition, write: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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 FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415-7163 or Toll Free: 1–800–368–5642 or E-mail: DLM1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission received a petition for rulemaking submitted by the petitioners. The petitioners are all non-operating joint owners of nuclear power plants who are concerned about their potential liability in the event that other co-owners or the licensee(s) licensed to possess and operate those nuclear power plants were to default on, or become financially incapable of bearing, their share of the costs of operating in accordance with NRC requirements. Specifically, the petitioners are concerned that the NRC's ''Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry'' (Policy Statement) published on August 19, 1997 (62 FR 44071), has resulted in confusion among joint owners of nuclear power plants regarding the potential liability of the owner of a relatively small ownership share of a nuclear power plant. The petitioners believe that a joint owner could incur the burden of all or an excessive portion of a plant's costs if other joint owners or the operators defaulted or became financially incapable of bearing their share of the burden. The petitioners believe that the NRC might ignore existing *pro rata* cost sharing arrangements. The petitioners also believe that the NRC has published no information regarding what would constitute a *de minimis* share and under what circumstances the NRC might find the imposition of joint and several liability necessary to protect the public health and safety.

The petitioners have concluded that these factors have caused much confusion and uncertainty about the potential liability of a joint owner, and can adversely affect the ability to raise capital in an uncertain market that is undergoing consolidation and restructuring. The petitioners believe that the Policy Statement might stifle the emerging market for the sale of nuclear power plants and associated interests, and have concluded that the unsettled nature of potential liability would adversely affect joint owners who wish to be acquired by other utilities because decommissioning costs are unknown. The petitioners request that the issue of potential liability among joint owners be resolved by amending the regulations pertaining to enforcement in 10 CFR Part 50.

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM–50–64. The NRC is soliciting public comment on the petition for rulemaking.

Discussion of the Petition

The petitioners note that the NRC Policy Statement issued on August 13, 1997 and published in the **Federal Register** on August 19, 1997 (62 Fed. Reg. 44071), ''Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry'' (Policy Statement) contemplated how NRC would respond to potential safety impacts on power reactor licensees that could result from economic deregulation and restructuring of the electric utility industry. Although the NRC recognized that many licensed nuclear power plants are jointly owned facilities, the petitioners are concerned that the NRC stated that *pro rata* cost sharing arrangements might be ignored in ''highly unusual situations where adequate protection of public health and safety would be compromised if such action were not taken, to consider imposing joint and several liability on co-owners of more than a *de minimis* share when one or more co-owners have defaulted.'' The petitioners are also concerned that the NRC has published no information regarding what would constitute a *de minimis* share and the situation where the NRC might find the imposition of joint and several liability necessary to protect the public health and safety. The petitioners believe that the quoted portion of the Policy Statement appears to create a possibility that the owner of a small share of a nuclear power plant could be held responsible for all or an excessive portion of a plant's costs if other co-owners or the operators became financially incapable of meeting their *pro rata* obligations.

The petitioners contend that these factors create much uncertainty as to the potential liability of a joint owner and could adversely affect a joint owner's ability to raise capital in an industry undergoing consolidation and restructuring. The petitioners believe there is an emerging market for the sale of nuclear power plants and interest in those plants that could be stifled. The petitioners also believe that the unsettled potential liability issue could prevent co-owning utilities from being acquired by other utilities because actual or projected costs, such as decommissioning costs, are unknown.

The petitioners stated that a group of joint owners requested NRC review of the Policy Statement and ultimately petitioned for judicial review in the U.S. Court of Appeals for the D.C. Circuit, *American Public Power Association, et al. v. Nuclear Regulatory Commission, et al.* (Case No. 98–1219). Although the case was dismissed after an agreement between the parties, the NRC stipulated that future legal challenges on the potential liability issue of joint owners would not be precluded by the dismissal.

The petitioners have proposed the following language they believe will eliminate confusion and establish a stable regulatory process on the potential liability issue, and request that it be included among the enforcement provisions in 10 CFR part 50:

> Whenever the Commission finds it necessary or desirable to impose additional requirements by rule, order or amendment on a person subject to this part to promote or protect the public health and safety, the additional requirements will be directed first to the person licensed to possess and operate the facility. If it becomes necessary to impose additional requirements on persons who only own the facility, and were never licensed to operate, then the Commission will not impose greater than the agreed allocation of responsibility among all the owners and operators reflected in applicable joint ownership or similar agreements pertaining to the plant.

Although the petitioners agree that all licensees must comply with their licenses, they believe the prospect of joint and several liability is directly contrary to joint ownership agreements in which ownership commitments were made and substantial sums of capital were raised based on a contractual *pro rata* allocation of liability for plant costs. The petitioners also contend that accounting of assets and liabilities for potential sales of ownership interests is made more uncertain because of the unsettled potential joint liability issue.

In addition to the petition for rulemaking, the petitioners have attached a document entitled, ''Memorandum of Law in Support of Petition for Rulemaking.'' The petitioners state that the Atomic Energy Act of 1954, as amended (AEA), does not authorize the NRC to impose any liability (*per se*) and only allows the NRC to impose certain substantive safety obligations on licensees. The petitioners state that the Price Anderson Act (AEA § 170), contains an elaborate statutory framework for public liability and associated actions, and provides for various fees and NRC involvement in deferred premiums. However, the petitioners contend that the NRC has no public safety authority to impose liability or initiate or adjudicate claims of liability on behalf of the public.

Under the Price Anderson Act, the petitioners note that legal actions are brought by injured persons, rules for

decision in public liability cases are derived from State law, and that the U.S. district courts have jurisdiction to adjudicate claims. The petitioners note that although the AEA and congressional appropriations acts permit the NRC to impose and collect fees, they believe the power to create fee liability does not extend to other types of liability. The petitioners believe that although the NRC has authority to impose financial qualifications requirements and has used this authority to require funds to be provided for decommissioning, no comparable funding requirement for operation exists. The petitioners also note that although the Environmental Protection Agency, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), has authority to initiate safety improvements at taxpayers' expense and then sue the licensee for reimbursement, nothing in the AEA allows the NRC to decommission a plant and impose liability for reimbursement. The petitioners state that the NRC policy on joint and several liability could be understood to ''. . . hold co-licensees jointly and severally responsible for meeting specific substantive *safety obligations* under the AEA. However, even as so understood, the Commission's statement is directly contrary to the contractual basis on which joint ownership arrangements for nuclear power plants have been structured. In most, if not all, such arrangements, ownership commitments were made and substantial sums of capital raised based on a contractual *pro rata* allocation of responsibility for plant costs.'' (Emphasis in original). The petitioners state that because the NRC has implicitly accepted these arrangements, all interested parties would have their reasonable expectations overturned by the imposition of joint and several liability.

The petitioners assert that NRC has approved many agreements among co-owners based on a contractual *pro rata* allocation of responsibility for plant costs. The petitioners assert that a draconian imposition of liability is not necessary because even nuclear power plant licensees in bankruptcy have always been able to comply with NRC safety requirements. The petitioners note that the situation at Three Mile Island Unit 2 after the accident was adequately addressed by the accident cleanup insurance requirements in 10 CFR 50.54(w). The petitioners believe that the NRC has never faced a situation where a nuclear power reactor licensee was financially unable to meet its safety obligations and that even with the operating licensee in bankruptcy, the NRC's safety authority is preserved. The petitioners cite *Midlantic National Bank* v. *New Jersey Department of Environmental Protection,* 474 U.S. 494, 506–507 (1986); *Ohio* v. *Kovacs,* 469 U.S. 274 (1985); and *Penn Terra, Ltd.* v. *Department of Environmental Resources,* 733 F. 2d 267 (3rd Cir. 1984), as cases which found that a bankruptcy court does not have the power to authorize an abandonment without compliance with environmental laws and protection of the public's health and safety.

The petitioners also believe the Policy Statement is inconsistent with the final rule published on September 22, 1998 (63 FR 50465), and associated proposed rule that was published on September 10, 1997 (62 FR 47588), ''Financial Assurance Requirements for Decommissioning Nuclear Power Reactors,'' in which the NRC noted difficulties that could stem from attempting to impose joint liability on co-owners and co-licensees for decommissioning costs. These difficulties included problems regarding potential disagreements on decommissioning methods, the inhibition of flexibility, the weakening of competitive position, and implementation that the petitioners believe exist regarding potential joint owner liability. The petitioners reiterate that under the AEA, it would be unreasonable and unlawful for the NRC to impose ''an onerous safety obligation on non-operating co-owners simply because the person with the real safety obligation'the operator'is facing financial difficulty'' especially when the NRC has the authority to impose financial qualifications requirements on those who propose to operate a reactor.

The petitioners also contend that the Policy Statement raises questions of impermissible retroactivity to nuclear power plant owners. The petitioners note that in *Landgraf* v. *USI Film Products,* 511 U.S. 244, 265–266 (1994), the Supreme Court has held that:

> [E]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted * * *. In a free, dynamic, society, creativity in both commercial and artistic endeavors is fostered by a rule of Law that gives people confidence about the legal consequences of their actions.

In *General Motors Corp.* v. *Romein,* 503 U.S. 181, 191 (1992), the petitioners note that the Supreme Court ruled that: ''Retroactive legislation presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions.'' In *Bowen* v. *Georgetown Univ. Hospital,* 488 U.S. 204, 208 (1988), the petitioners also noted that the Supreme Court found that ''congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result.''

The petitioners believe that these cited decisions illustrate that an NRC order imposing onerous safety requirements on a co-owner licensee disregard pro rata sharing agreements, defeat legitimate expectations, and upset settled transactions. The petitioners assert that joint owners have relied upon *pro rata* arrangements for decades with implicit NRC approval and that the industry restructuring and emerging market for nuclear power plants require that these sharing agreements continue. The petitioners believe that under *Bowen,* the NRC cannot issue retroactive rules unless that authority is granted explicitly by statute. The petitioners believe that the NRC does not possess this authority because nothing in the AEA specifically gives the NRC the power to issue retroactive rules.

The petitioners distinguish backfit rules from those that are retroactive. The petitioners acknowledge that the vast majority of NRC backfits apply to plant operation after the effective date of the backfit and could never have been applied without the beginning of plant operation. However, the petitioners state that the imposition of new requirements on non-operating co-owners without regard for *pro rata* cost sharing agreements is distinguishable from a backfit because entities licensed to own or operate have no reasonable expectation that the NRC will never impose additional safety requirements as a condition of continued operation. The petitioners maintain that for non-operating co-owners there is reasonable expectation that the NRC would continue to honor *pro rata* cost-sharing contractual agreements even though NRC has power to impose additional safety measures.

The petitioners acknowledge that any determination that an NRC rule or order is impermissibly retroactive will be made by the courts. However, the petitioners have concluded that an NRC imposition of a new operational safety requirement on a non-operating co-owner group that holds all co-owners equally responsible and disregards *pro rata* cost-sharing agreements would be unreasonable and unlawful.

Lastly, the petitioners acknowledge that the NRC has the authority to prevent an unsafe plant from operating. They also agree that a plant that cannot operate is a liability, not an asset. The petitioners cite *Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2)*, CLI–88–10, 28 NRC 573 (1988), and state that it is in the interest of all licensees, co-owners, and operators to agree on the funding of necessary safety measures so the plant can operate. However, the petitioners believe that the Policy Statement interferes with licensees' rights to make their own decisions regarding allocation of safety expenses. The petitioners have concluded that NRC interference in allocation decisions among co-owners is not necessary for safety and creates potentially great difficulties for co-owning utilities who wish to consolidate, restructure, or sell assets.

The Petitioners' Conclusions

The petitioners have concluded that the NRC Policy Statement regarding electric utility deregulation and restructuring has caused great confusion among non-operating co-owners about the issue of potential joint liability if an operating licensee becomes financially incapable of meeting license conditions. The petitioners have concluded that the NRC might ignore existing *pro rata* contractual agreements among joint licensees and that no information has been published regarding what would constitute a *de minimis* share or under what circumstances the NRC might find the imposition of joint liability necessary to protect the public health and safety. The petitioners have also concluded that the unsettled potential liability issue could mean that a co-owner of a very small ownership share could become financially incapable of fulfilling its contractual obligations. Lastly, the petitioners have concluded that these factors might stifle an emerging market for the sale of nuclear power plants and associated interests because future operating and decommissioning costs are unknown.

The petitioners request that the issue of potential liability among joint owners be resolved as requested in their petition by amending the regulations pertaining to enforcement in 10 CFR part 50.

Dated at Rockville, Maryland, this 29th day of December, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 99–97 Filed 1–4–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–47–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain British Aerospace Model BAC 1–11 200 and 400 series airplanes. That AD currently limits the number of operations at increased cabin pressure differential, and requires repetitive structural inspections for cracking of the fuselage, and repair or replacement of parts, if necessary. This action would require additional repetitive inspections for cracking of the fuselage. This proposal is prompted by the determination that airplanes operating at increased cabin pressure differential are more likely to develop fatigue cracking earlier in their service lives than those airplanes operating at normal cabin differential pressures. The actions specified by the proposed AD are intended to detect and correct fatigue cracking of the airplane fuselage, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by February 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–47–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, Service Support, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–47–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–47–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 14, 1989, the FAA issued AD 89–18–10, amendment 39–6310 (54 FR 34768, August 22, 1989), applicable to certain British Aerospace Model BAC 1–11 200 and 400 series airplanes. That AD currently limits the number of operations at increased cabin pressure differential, and requires repetitive structural inspections for cracking of the fuselage, and repair or replacement of parts, if necessary. That action was prompted by the determination that airplanes operating at increased cabin pressure differential are more likely to develop fatigue cracking earlier in their service lives than those airplanes operating at normal cabin differential pressures. The requirements of that AD are intended to prevent inability of the

airplane structure to carry required loads.

Actions Since Issuance of AD 89–18–10

Since the issuance of AD 89–18–10, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, advises that it has reviewed existing mandated supplemental fatigue inspections applied to older Model BAC 1–11 series airplanes. Following this review, additional routine visual inspections of the fuselage were recommended to improve the probability of the detection of fatigue cracking. Such fatigue cracking, if not corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued British Aerospace Alert Service Bulletin 53–A–PM5922, Issue 2, dated April 27, 1995, which describes procedures for repetitive structural inspections for cracking of the fuselage. The procedures described in Issue 2 of the service bulletin are essentially identical to Issue 1, however, it adds additional areas to be inspected and revises certain inspection thresholds and intervals. The CAA classified this alert service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 89–18–10 to continue to limit the number of operations at increased cabin pressure differential, and require repetitive structural inspections for cracking of the fuselage, and repair or replacement of parts, if necessary. The proposed AD would require additional repetitive structural inspections for cracking of the fuselage, revise certain inspection thresholds and intervals, and corrective actions, if necessary. The actions would be required to be accomplished in accordance with Issue 2 of the alert service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Alert Service Bulletin

Operators should note that, although the alert service bulletin does not specify an initial compliance time for performing the additional visual inspections, the FAA has determined that a threshold of 3 months to accomplish those inspections would address the identified unsafe condition in a timely manner. In developing this compliance time, the FAA considered the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspections. In light of all of these factors, the FAA finds that this compliance time represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 42 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 89–18–10, and retained in this proposed AD, take approximately 67 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $168,840, or $4,020, per airplane.

The new inspections that are proposed in this AD action would take approximately 29 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new proposed requirements of this AD on U.S. operators is estimated to be $73,080, or $1,740 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6310 (54 FR 34768, August 22, 1989), and by adding a new airworthiness directive (AD), to read as follows:

British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Docket 98–NM–47–AD. Supersedes AD 89–18–10, Amendment 39–6310.

Applicability: Model BAC 1–11 200 and 400 series airplanes on which British Aerospace Modifications PM2840 and PM3187 have been accomplished; or on which British Aerospace Modification PM4886 has been accomplished; except for airplanes on which British Aerospace

Modification PM5282 (cabin freight door) has been accomplished; and certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the airplane fuselage, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Except as provided by paragraph (c) of this AD: For airplanes modified for operation to a maximum of 7.75 pounds per square inch (psi) cabin pressure differential, as specified in British Aerospace Alert Service Bulletin 53-A-PM5922, Issue 1, dated January 27, 1987, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) At or prior to the accumulation of 55,000 total landings, or within 15 months after September 28, 1989 (the effective date of AD 89–18–10, amendment 39–6310), whichever occurs later, perform the inspections specified in paragraph 2.1 of the alert service bulletin. Thereafter, repeat the inspections in accordance with paragraph 2.1.1 of the alert service bulletin at intervals shown in Table AA of the alert service bulletin.

(2) At or prior to the accumulation of 60,000 total landings, or within 30 days after September 28, 1989, whichever occurs later, reduce the aircraft maximum cabin pressure differential to 7.5 psi by system modification, in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(b) Except as provided by paragraph (d) of this AD: For airplanes modified for operation at cabin pressure differentials above 7.75 psi up to a maximum of 8.2 psi, as specified in British Aerospace Alert Service Bulletin 53-A-PM5922, Issue 1, dated January 27, 1987, accomplish the requirements of paragraph (b)(1) or (b)(2) of this AD, as applicable. Subsequently, accomplish the requirements of paragraphs (b)(3) and (b)(4), or paragraphs (b)(5) and (b)(6) of this AD, as applicable.

(1) For airplanes originally manufactured for operation at cabin pressure differentials above 7.75 psi, at or prior to the accumulation of the number of landings shown for initial inspection in the ''NE period'' column of Table AA in the alert service bulletin, or within 15 months after September 28, 1989, whichever occurs later, perform inspections specified in paragraph 2.2.1 of the alert service bulletin and repeat the inspections as specified in paragraph 2.2.3 of the alert service bulletin at the intervals shown in Table AA of the alert service bulletin.

(2) For airplanes modified for operation at cabin pressure differential above 7.75 psi after the airplane entered service, at or prior to the accumulation of the number of landings shown for initial inspection in the ''NE period'' column [obtained using the inspection adjustment graph (page 6) of the alert service bulletin], in Table AA of the alert service bulletin, or within 15 months after September 28, 1989, whichever occurs later, perform initial inspections specified in paragraph 2.2.2 of the alert service bulletin. Thereafter, repeat the inspections as specified in paragraph 2.2.3 of the alert service bulletin, at intervals shown in Table AA of the alert service bulletin.

(3) At or prior to the accumulation of 55,000 total landings, or within 30 days after September 28, 1989, whichever occurs later, reduce the aircraft cabin maximum operating pressure differential to 7.5 or 7.75 psi by modification as specified in paragraph 2.2.4 of the alert service bulletin, in accordance with a method approved by the Manager, International Branch, ANM–116.

(4) For airplanes which have had the cabin pressure differential reduced from 8.2 psi to 7.75 psi as specified in paragraph 2.2.6 of the alert service bulletin, perform repetitive inspections at the intervals specified in the ''N.E. period'' column in Table AA of the alert service bulletin.

(5) At or prior to the accumulation of 60,000 total landings, or within 30 days after September 28, 1989, whichever occurs later, the airplane cabin maximum operating pressure differential must be reduced to 7.5 psi by modification as specified in paragraph 2.2.7 of the alert service bulletin, in accordance with a method approved by the Manager, International Branch, ANM–116.

(6) For airplanes modified for 8.2 psi maximum cabin operating pressure differential and operated for a period in excess of any Table AA inspection threshold in the alert service bulletin, perform one additional inspection at or prior to the Table AA ''N.E. period'' column repeat interval after limiting operation to 7.5 psi, as specified in paragraph 2.2.5 of the alert service bulletin.

(c) For airplanes modified for operation to a maximum of 7.75 pounds per square inch (psi) cabin pressure differential, as specified in British Aerospace Alert Service Bulletin 53–A–PM5922, Issue 2, dated April 27, 1995: Prior to the accumulation of the number of landings specified in Table AA of the alert service bulletin, or within 3 months after the effective date of this AD, whichever occurs later, perform the inspections specified in paragraph 2.1 of the alert service bulletin. Thereafter, repeat the inspections in accordance with paragraph 2.1.1 of the alert service bulletin at the intervals shown in Table AA of the alert service bulletin. Accomplishment of the inspections required by this paragraph terminates the repetitive inspections required by paragraph (a)(1) of this AD.

Note 2: Paragraph (a)(1) of this AD restates the requirement for an initial and repetitive inspections contained in paragraph A.1. of AD 89–18–10. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 89–18–10, paragraph (c) of this AD requires that the next scheduled inspection be performed within the repetitive inspection interval specified in Table AA of Issue 2 of the alert service bulletin, after the last inspection performed in accordance with paragraph A.1. of AD 89–18–10.

(d) For airplanes modified for operation at cabin pressure differentials above 7.75 psi up to a maximum of 8.2 psi, as specified in British Aerospace Alert Service Bulletin 53–A–PM5922, Issue 2, dated April 27, 1995: Prior to the accumulation of the number of landings specified in Table AA of the alert service bulletin, or within 3 months after the effective date of this AD, whichever occurs later, perform the inspections specified in paragraph 2.2.1 of the alert service bulletin. Thereafter, repeat the inspections in accordance with paragraph 2.2.3 of the alert service bulletin at the intervals shown in Table AA of the alert service bulletin. Accomplishment of the inspections required by this paragraph terminates the repetitive inspections required by paragraph (b)(1), (b)(2) or (b)(4) of this AD, as applicable.

Note 3: Paragraph (b)(1) of this AD restates the requirement for an initial and repetitive inspections contained in paragraph B.1. of AD 89–18–10. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 89–18–10, paragraph (d) of this AD requires that the next scheduled inspection be performed within the repetitive inspection interval specified in Table AA of Issue 2 of the alert service bulletin, after the last inspection performed in accordance with paragraph B.1. of AD 89–18–10.

(e) If any defect is found during any inspection required by this AD, prior to further flight, accomplish paragraph (e)(1), (e)(2), or (e)(3) of this AD, as applicable.

(1) Replace the defective part with a serviceable part of the same part number in accordance with the Structural Repair Manual; or

(2) For damage within the limits specified in the BAC 1–11 Structural Repair Manual, repair in accordance with the Structural Repair Manual; or

(3) Repair in accordance with a method approved by the Manager, International Branch, ANM–116.

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to

a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 28, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–49 Filed 1–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–240–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72 series airplanes. This proposal would require initial and repetitive inspections to detect fatigue cracking in certain areas of the fuselage, and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracking of the fuselage and the passenger and service doors, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by February 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–240–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–240–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–240–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR72 series airplanes. The DGAC advises that, during full-scale fatigue testing of the airplane, cracks were detected between 12,000 and 36,000 flight cycles. The cracks originated in the following areas:

- At the attachment holes at the hinge fitting of the cargo compartment door outer skin;
- At the positioning holes of both the lower and upper parts of the fuselage main frames;
- At the stop holes of the plug door stop fittings on the forward and aft left passenger doors, and the forward and aft right service doors;
- At the fastener holes in the outboard stringer at frames 24 and 28; and
- At the fastener holes in the area of stringer 11 at frame 26.

Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued the following Avions de Transport Regional Service Bulletins:

- ATR72–52–1018, dated May 18, 1995, which describes procedures for a preliminary inspection of the existing fasteners to determine if the fasteners are out of tolerance, and follow-on corrective actions, if necessary. The follow-on corrective actions include removal of existing fasteners and hinges, an inspection of the fastener holes to determine if they are out of tolerance or cracked, a visual inspection of holes for correct tolerance, a high frequency eddy current inspection for cracking; and replacement of the cargo compartment door hinges with new hinges, and repair, if necessary.
- ATR72–53–1013, Revision 2, dated March 22, 1993, which describes procedures for a one-time visual inspection to determine that all rivets are installed in all affected key holes located on main frames 25 and 27 of the fuselage, between stringers 14 and 15; installation of rivets in affected key holes; and an eddy current inspection of the affected key holes to detect cracks.
- ATR72–53–1019, Revision 2, dated October 15, 1996, which describes procedures for a one-time visual inspection to determine that all rivets are installed in the tooling and key holes located on the standard frames of the fuselage; installation of rivets in affected tooling and key holes; a visual inspection to detect cracks of the tooling and key holes that are missing rivets; and installation of new rivets, if necessary.
- ATR72–52–1028, dated July 5, 1993, which describes procedures for repetitive eddy current inspections to detect cracks in the plug door stop fittings of the forward and aft left passenger doors, and the forward and aft right service doors; and replacement of any cracked stop fittings.

• ATR72–52–1033, dated April 28, 1995, and ATR72–52–1029, Revision 1, dated November 16, 1994, which describe procedures for replacement of the plug door stop fittings of the forward and aft left passenger doors, and the forward and aft right service doors, with new, improved fittings. Accomplishment of this replacement would eliminate the need for the repetitive inspections specified in Avions de Transport Regional Service Bulletin ATR72–52–1028.

• ATR72–53–1021, Revision 1, dated February 20, 1995, which describes procedures for a one-time eddy current inspection to detect cracks in the rivet holes of the door surround corners of the forward and aft left passenger doors; and the forward and aft right service doors; modification of the rivet holes, and replacement of the door surround corners with modified corners.

• ATR72–53–1014, Revision 2, dated October 15, 1992, which describes procedures for a one-time eddy current inspection to detect cracks of the rivet holes located on the left and right sides of external stringer 4 at frames 24 and 28 of the fuselage, and installation of reinforcement angles.

• ATR72–53–1020, dated October 6, 1992, which describes procedures for a one-time eddy current inspection to detect cracks of the rivet holes located on stringer 11 of frame 26 of the fuselage, and installation of doublers and stringer clips on the left and right sides of frame 26 on stringer 11.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 92–046–012(B)R4, dated November 5, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Differences Between the Proposed Rule and Service Bulletins

Operators should note that, unlike the procedures described in Avions de Transport Regional Service Bulletins ATR72–52–1018, original issue; ATR72–53–1013, Revision 2; ATR72–53–1019, Revision 2; ATR72–52–1028; ATR72–52–1021, Revision 1; ATR72–53–1014, Revision 2; and ATR72–52–1020, original issue; this proposed AD would not permit further flight if cracking is detected in any section of the fuselage. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any portion of the fuselage that is found to be cracked must be repaired or modified prior to further flight, in accordance with the applicable service bulletin, except as discussed in the next paragraph.

Operators also should note that, although Avions de Transport Regional Service Bulletins ATR72–53–1013, Revision 2; ATR72–53–1019, Revision 2; ATR72–53–1021, Revision 1; ATR72–53–1014, Revision 2; and ATR72–53–1020, original issue; specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or the DGAC (or its delegated agent).

Cost Impact

The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1018 (14 U.S.-registered airplanes), it would take approximately 250 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would cost approximately $9,880 per airplane. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $348,320, or $24,880 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1013, Revision 2, (2 U.S.-registered airplanes), it would take approximately 3 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $360, or $180 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1019, Revision 2, (2 U.S.-registered airplanes), it would take approximately 100 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $12,000, or $6,000 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1028, (2 U.S.-registered airplanes), it would take approximately 5 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $600 or $300 per airplane, per inspection cycle.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1033, and ATR72–52–1029, Revision 1, (2 U.S.-registered airplanes), it would take approximately 145 work hours per airplane to accomplish the proposed door stop fitting replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the stop fittings replacement proposed by this AD on U.S. operators is estimated to be $17,400 or $8,700 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1021, Revision 1, (2 U.S.-registered airplanes) it would take approximately 30 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $3,600, or $1,800 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1014, Revision 2, (2 U.S.-registered airplanes), it would take approximately 8 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators

is estimated to be $960, or $480 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1020, (14 U.S.-registered airplanes), it would take approximately 6 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $5,040, or $360 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aerospatiale: Docket 98-NM–240-AD.

Applicability: Model ATR72 series airplanes, certificated in any category, and listed in the following Avions de Transport Regional Service Bulletins:

- ATR72–52–1018, dated May 18, 1995;
- ATR72–53–1013, Revision 2, dated March 22, 1993;
- ATR72–53–1019, Revision 2, dated October 15, 1996;
- ATR72–52–1028, dated July 5, 1993;
- ATR72–52–1033, dated April 28, 1995;
- ATR72–52–1029, Revision 1, dated November 16, 1994;
- ATR72–53–1021, Revision 1, dated February 20, 1995;
- ATR72–53–1014, Revision 2, dated October 15, 1992; and
- ATR72–53–1020, dated October 6, 1992.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the fuselage and the passenger and service doors, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) For airplanes on which Aerospatiale Modification 03191 (reference Avions de Transport Regional Service Bulletin ATR72–52–1018, dated May 18, 1995) has not been accomplished: Perform a preliminary inspection of the existing fasteners to determine if the fasteners are out of tolerance in accordance with paragraph 2.C.(1) of the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR72–52–1018, dated May 18, 1995. Depending on the results of the inspection, prior to further flight, accomplish the requirements in paragraphs (a)(1) and (a)(2), or (a)(2) and (a)(3) of this AD, as applicable.

(1) Remove the fasteners and inspect the fastener holes to determine if they are out of tolerance or cracking, in accordance with Part A of the Accomplishment Instructions of the service bulletin. Perform a visual inspection of the holes for correct tolerance, and a high frequency eddy current (HFEC) inspection for cracking.

(i) If any discrepancy is detected, prior to further flight, repair in accordance with Part C of the Accomplishment Instructions of the service bulletin.

(ii) If no discrepancy is detected, prior to further flight, replace the cargo compartment door hinges with new hinges in accordance with Part A of the Accomplishment Instructions of the service bulletin.

(2) Remove the existing fasteners and inspect the fastener holes for correct tolerance in accordance with Part B of the Accomplishment Instructions of the service bulletin.

(i) If any discrepancy is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) or its delegated agent.

(ii) If no discrepancy is detected, prior to further flight, replace the cargo compartment door hinges with new hinges in accordance with Part B of the Accomplishment Instructions of the service bulletin.

(3) Remove the existing fasteners, repair, and replace the cargo compartment door hinges with new hinges in accordance with Part C of the Accomplishment Instructions of the service bulletin.

(b) For airplanes having serial numbers 108 through 210 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 1 month after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if rivets are installed in the key holes located on main frames 25 and 27 of the fuselage, between stringers 14 and 15, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1013, Revision 2, dated March 22, 1993.

(1) If all rivets are installed, no further action is required by paragraph (b) of this AD.

(2) If any rivet is missing, prior to further flight, perform an eddy current inspection of the affected key holes to detect cracks, in accordance with the service bulletin.

(i) If no crack is detected during the inspection required by paragraph (b)(2) of this AD, prior to further flight, install rivets in all affected key holes, in accordance with the service bulletin. If installation of rivets is not possible, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(ii) If any crack is detected during the inspection required by paragraph (b)(2) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(c) For airplanes having serial numbers 108 through 207 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 1 month after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if rivets are installed in the tooling and key holes located on the standard frames of the fuselage, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1019, Revision 2, dated October 15, 1996.

(1) If all rivets are installed, no further action is required by paragraph (c) of this AD.

(2) If any rivet is missing, prior to further flight, perform a visual inspection of the

affected tooling and key holes to detect cracks, in accordance with the service bulletin.

(i) If no crack is detected during the inspection required by paragraph (c)(2) of this AD, prior to further flight, install new rivets in all affected tooling and key holes, in accordance with the service bulletin.

(ii) If any crack is detected during the inspection required by paragraph (c)(2) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(d) For airplanes on which Aerospatiale Modification 03775 (reference Avions de Transport Regional Service Bulletin ATR72–52–1029, Revision 1, dated November 16, 1994) or Aerospatiale Modification 03776 (reference Avions de Transport Regional Service Bulletin ATR72–52–1033, dated April 28, 1995) has not been accomplished: Prior to the accumulation of 12,000 total flight cycles, or within 1 month after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks in the plug door stop fittings of the forward and aft passenger and service doors, in accordance with Avions de Transport Regional Service Bulletin ATR72–52–1028, dated July 5, 1993.

(1) If no crack is detected, repeat the eddy current inspection required by paragraph (d) of this AD thereafter at intervals not to exceed 6,000 flight cycles.

(2) If any crack is detected, prior to further flight, replace the cracked stop fittings with new, improved fittings, in accordance with Avions de Transport Regional Service Bulletin ATR72–52–1033, dated April 28, 1995, or ATR72–52–1029, Revision 1, dated November 16, 1994; as applicable. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraph (d)(1) of this AD for that fitting.

(e) For airplanes on which Aerospatiale Modification 03775 or Aerospatiale Modification 03776 has not accomplished: Prior to the accumulation of 18,000 total flight cycles, or within 1 month after the effective date of this AD, whichever occurs later, replace the plug door stop fittings of the forward and aft passenger and service doors with new, improved fittings, in accordance with Avions de Transport Regional Service Bulletin ATR72–52–1033, dated April 28, 1995; or ATR72–52–1029, Revision 1, dated November 16, 1994; as applicable. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraph (d)(1) of this AD.

(f) For airplanes on which Aerospatiale Modification 02986 (reference Avions de Transport Regional Service Bulletin ATR72–53–1021, Revision 1, dated February 20, 1995) has not been accomplished: Prior to the accumulation of 18,000 total flight cycles, or within 1 month after the effective date of this AD, whichever occurs later, perform a one-time eddy current inspection to detect cracks in the rivet holes of the door surround corners of the forward and aft passenger and service doors, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1021, Revision 1, dated February 20, 1995.

(1) If no crack is detected during the inspection required by paragraph (f) of this AD, prior to further flight, modify the rivet holes, and replace the door surround corners with modified corners, in accordance with the service bulletin.

(2) If any crack is detected during the inspection required by paragraph (f) of this AD, prior to further flight, repair and modify in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(g) For airplanes on which Aerospatiale Modification 02397 (reference Avions de Transport Regional Service Bulletin ATR72–53–1014, Revision 2, dated October 15, 1992) has not been accomplished: Prior to the accumulation of 12,000 total flight cycles, or within 1 month after the effective date of this AD, whichever occurs later, perform a one-time eddy current inspection to detect cracks of the rivet holes located on the left and right sides of external stringer 4 at frames 24 and 28 of the fuselage, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1014, Revision 2, dated October 15, 1992.

(1) If no crack is detected during the inspection required by paragraph (g) of this AD, prior to further flight, install reinforcement angles on the left and right sides of external stringer 4 at frames 24 and 28 of the fuselage, in accordance with the service bulletin.

(2) If any crack is detected during the inspection required by paragraph (g) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(h) For airplanes on which Aerospatiale Modification 03185 (reference Avions de Transport Regional Service Bulletin ATR72–53–1020, dated October 6, 1992) has not been accomplished: Prior to the accumulation of 12,000 total flight cycles, or within 1 month after the effective date of this AD, whichever occurs later, perform a one-time eddy current inspection to detect cracks of the rivet holes located on stringer 11 of frame 26 of the fuselage, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1020, dated October 6, 1992.

(1) If no crack is detected during the inspection required by paragraph (h) of this AD, prior to further flight, install doublers and stringer clips on the left and right sides on stringer 11 of frame 26 of the fuselage, in accordance with the service bulletin.

(2) If any crack is detected during the inspection required by paragraph (h) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

Note 2: Inspections and repairs accomplished prior to the effective date of this AD in accordance with Avions de Transport Regional Service Bulletins ATR72–53–1013, dated June 10, 1991, or Revision 1, dated June 12, 1992; ATR72–53–1019, dated May 13, 1993, or Revision 1, dated November 11, 1994; ATR72–52–1029, dated July 20, 1994; or ATR72–53–1014, Revision 1, dated June 30, 1992; are considered acceptable for compliance with the applicable actions specified in this amendment.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 4: The subject of this AD is addressed in French airworthiness directive 92–046–012(B)R4, dated November 5, 1997.

Issued in Renton, Washington, on December 29, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–47 Filed 1–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–50–AD]

RIN 2120–AA64

Airworthiness Directives; S.N. CENTRAIR 101 Series Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all S.N. CENTRAIR (CENTRAIR) 101 series gliders that have modification 101–24 (major cockpit configuration equipped on all gliders manufactured since 1990) incorporated, and do not have modification 101–21 (minor modifications to this cockpit configuration) incorporated. The proposed AD would require securing an attachment lug to the battery discharge warning device on the glider bracket. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The

actions specified by the proposed AD are intended to prevent elevator flight control interference caused by an unsecured battery discharge warning device, which could result in reduced or loss of glider control.

DATES: Comments must be received on or before February 11, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–50–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from S.N. CENTRAIR, Aerodome—36300 Le Blanc, France; telephone: 02.54.37.07.96; facsimile: 02.54.37.48.64. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule.

The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–50–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–50–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all CENTRAIR 101 series gliders that have modification 101–24 (major cockpit configuration equipped on all gliders manufactured since 1990) incorporated, and do not have modification 101–21 (minor modifications to this cockpit configuration) incorporated. The DGAC reports that the battery discharge warning device was not secure during a routine inspection on one of the affected gliders.

If the battery discharge warning device is not secure on the bracket of the glider, the pilot could experience a loss of elevator control with no warning of the loss of power.

Relevant Service Information

CENTRAIR has issued Service Bulletin No. 101–19, Revision 1, dated May 20, 1997, which specifies procedures for securing an attachment lug to the battery discharge warning device on the glider bracket.

The DGAC classified this service bulletin as mandatory and issued French AD 97–149(A), dated July 16, 1997, in order to assure the continued airworthiness of these gliders in France.

The FAA's Determination

These glider models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other CENTRAIR 101 series gliders of the same type design that are registered in the United States, the FAA is proposing AD action. The proposed AD would require securing an attachment lug (part number $Y986A or an FAA-approved equivalent part number) to the battery discharge warning device on the glider bracket.

Accomplishment of the proposed action would be required in accordance with CENTRAIR Service Bulletin No. 101–19, Revision 1, dated May 20, 1997.

The affected gliders have modification 101–24 (major cockpit configuration equipped on all gliders manufactured since 1990) incorporated, and do not have modification 101–21 (minor modifications to this cockpit configuration) incorporated.

Compliance Time of the Proposed AD

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS). The unsafe condition described by the proposed AD is not a result of repetitive glider operation. The loss of battery power to the elevator control system could occur regardless of whether the glider is in flight. Therefore, to assure that the above-referenced condition is corrected on all of the affected gliders within a reasonable period of time without inadvertently grounding any gliders, a compliance schedule based upon calendar time instead of hours TIS is proposed.

Cost Impact

The FAA estimates that 63 gliders in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per glider to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $15 per glider. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $16,065, or $255 per glider.

Regulatory Impact

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

federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

S.N. Centrair: Docket No. 98-CE–50-AD.

Applicability: Models 101, 101A, 101P, and 101AP gliders, all serial numbers, certificated in any category; that have modification 101–24 (major cockpit configuration equipped on all gliders manufactured since 1990) incorporated, and do not have modification 101–21 (minor modifications to this cockpit configuration) incorporated.

Note 1: This AD applies to each glider 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 gliders 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 within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent elevator flight control interference caused by an unsecured battery discharge warning device, which could result in reduced or loss of glider control, accomplish the following:

(a) Secure an attachment lug (part number $Y986A or an FAA-approved equivalent part number) to the battery discharge warning device on the glider bracket, in accordance with CENTRAIR Service Bulletin No. 101-19, Revision 1, dated May 20, 1997.

(b) 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 glider to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(d) Questions or technical information related to CENTRAIR Service Bulletin No. 101–19, Revision 1, dated May 20, 1997, should be directed to S.N. CENTRAIR, Aerodome—36300 Le Blanc, France; telephone: 02.54.37.07.96; facsimile: 02.54.37.48.64. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in French AD 97–149(A), dated July 16, 1997.

Issued in Kansas City, Missouri, on December 29, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–46 Filed 1–4–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–104–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models C90A, B200, B200C, B200T, B200CT, 300, B300, B300C, and A200CT Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) Models C90A, B200, B200C, B200T, B200CT, 300, B300, B300C, and A200CT airplanes. The proposed AD would require installing a filter element in the landing gear hand pump suction line. The proposed AD is the result of reports of the potential for debris to enter the landing gear hand pump and interfere with its operation, which could prevent the nose landing gear from being extended manually. Two occurrences were reported of nose landing gear collapse after manual extension. The actions specified by the proposed AD are intended to prevent the inability to extend the landing gear with the hand pump caused by debris entering the landing gear hand pump, which could result in passenger injury or damage to the airplane if manual operation of the landing gear failed.

DATES: Comments must be received on or before March 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–104–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Paul DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–104–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–104–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of the potential for debris to enter the landing gear hand pump and interfere with its operation on certain Raytheon Models C90A, B200, B200C, B200T, B200CT, 300, B300, B300C, and A200CT airplanes. This could prevent the nose landing gear from being properly extended manually. Two occurrences were reported of nose landing gear collapse after manual extension.

This condition, if not corrected in a timely manner, could result in the inability to extend the landing gear with the hand pump with consequent passenger injury or damage to the airplane if manual operation of the landing gear failed.

Relevant Service Information

Raytheon has issued Mandatory Service Bulletin SB 32–3073, Revision 1, Issued: March, 1998, Revised: July 1998. This service bulletin includes procedures for installing a filter element in the landing gear hand pump suction line.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent the inability to extend the landing gear with the hand pump caused by debris entering the landing gear hand pump. This could result in passenger injury or damage to the airplane if manual operation of the landing gear failed.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Models C90A, B200, B200C, B200T, B200CT, 300, B300, B300C, and A200CT airplanes of the same type design, the FAA is proposing AD action. The proposed AD would require installing a filter element in the landing gear hand pump suction line. Accomplishment of the proposed action would be required in accordance with the service information previously referenced.

Cost Impact

The FAA estimates that 991 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 5 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Raytheon will give warranty credit for parts until July 31, 1999. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $297,300, or $300 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Aircraft Company (All type certificates of the affected airplanes previously held by the Beech Aircraft Corporation): Docket No. 98–CE–104–AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

Models	Serial Numbers
C90A	LJ–1063 through LJ–1482.
B200	BB–1158, BB–1167, BB–1193 through BB–1532, and all serial numbers with Beech Kit 101–8018 incorporated.
B200C	BL–113 through BL–117, BL–124 through BL–140, and all serial numbers with Beech Kit 101–8018 incorporated
B200T	BT–31 through BT–38, and all serial numbers with Beech Kit 101–8018 incorporated.
B200CT	BN–2, BN–3, and BN–4 that have Beech Kit 101–8018 incorporated.
B200CT	FG–1 and FG–2.
300	FA–1 through FA–230.
300	FF–1 through FF–19.
B300	FL–1 through FL–138.
B300C	FM–1 through FM–9.
B300C	FN–1.

Models	Serial Numbers
A200CT (C–12D).	BP–46 through BP–51.
A200CT (C–12F).	BP–52 through BP–63.
A200CT (RC–12H).	GR–14 through GR–19.
A200CT (RC–12K).	FE–1 through FE–9.
A200CT (RC–12N).	FE–10 through FE–24.
A200CT (RC–12P).	FE–25 through FE–31, FE–33, and FE–35.
A200CT (RC–12Q).	FE–32, FE–34, and FE–36.
B200C (C–12F).	BL–73 through BL–112 and BL–118 through BL–123.
B200C (C–12F).	BP–64 through BP–71.
B200C (UC–12F).	BU–1 through BU–10.
B200CT (RC–12F).	BU–11 and BU–12.
B200C (UC–12M).	BV–1 through BV–10.
B200C (RC–12M).	BV–11 and BV–12.
B200C (C–12R).	BW–1 through BW–19.

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 within the next 200 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent the inability to extend the landing gear with the hand pump caused by debris entering the landing gear hand pump, which could result in passenger injury or damage to the airplane if manual operation of the landing gear failed, accomplish the following:

(a) Install a filter element in the landing gear hand pump suction line, in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Mandatory Service Bulletin SB 32–3073, Revision 1, Issued: March, 1998, Revised: July 1998.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 28, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–44 Filed 1–4–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–98–AD]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model ASH 26E Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Model ASH 26E sailplanes. The proposed AD would require inspecting the red silicone tube of the rotor interior air cooling (just in front of the carburetor) for oil leaks and the heat damping layer of the lower exhaust damper fairing for oil contamination, and replacing the applicable parts where oil leakage or contamination is found. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to detect and correct any oil-contaminated exhaust damper fairing caused by oil leakage in the red silicone tube of the rotor interior air cooling, which could result in an exhaust fire and/or an explosion.

DATES: Comments must be received on or before February 11, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–98–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Alexander Schleicher GmbH & Co., Segelflugzeugbau, Postfach 60, 36163 Poppenhausen, Germany; telephone: ++49 (0) 6658–890; facsimile: ++49 (0) 6658–8923. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

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

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–98–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on all Alexander Schleicher Model ASH 26E sailplanes. The LBA reports an incident where oil in the heat damping layer of the exhaust fairing caught fire. Investigation reveals the following possible causes of this incident:

—Oil was spilled when filling the engine oil tank; and

—Oil leakage could have occurred in the red silicone tube of the rotor interior air cooling (just in front of the carburetor).

This condition, if not detected and corrected in a timely manner, could result in an exhaust fire and/or an explosion.

Relevant Service Information

Alexander Schleicher has issued Technical Note No. 6, dated August 10, 1998, which specifies procedures for inspecting the red silicone tube of the rotor interior air cooling (just in front of the carburetor) for oil leaks and the heat damping layer of the lower exhaust damper fairing for oil contamination.

The LBA classified this service bulletin as mandatory and issued German AD 98–347, dated September 10, 1998, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Alexander Schleicher Model ASH 26E sailplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the red silicone tube of the rotor interior air cooling (just in front of the carburetor) for oil leaks and the heat damping layer of the lower exhaust damper fairing for oil contamination, and replacing the applicable parts where oil leakage or contamination is found.

Accomplishment of the proposed inspection would be required in accordance with Alexander Schleicher Technical Note No. 6, dated August 10, 1998. The possible replacements would be required to be accomplished in accordance with the applicable maintenance manual or other applicable FAA-approved document.

Compliance Time of the Proposed AD

This unsafe condition is not a result of the number of times the sailplane is operated. The chance of this situation occurring is the same for a sailplane with 10 hours time-in-service (TIS) as it would be for a sailplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in the proposed AD in order to assure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Differences Between the German AD, the Technical Note, and This Proposed AD

Both Alexander Schleicher Technical Note No. 6, dated August 10, 1998, and German AD 98–347, dated September 10, 1998, specify the initial inspection prior to further flight.

The FAA does not have justification through its regulatory process to require the inspection prior to further flight. To assure that no affected sailplane is inadvertently grounded, the FAA is proposing a compliance time of 1 calendar month for the initial inspection.

Cost Impact

The FAA estimates that 8 sailplanes in the U.S. registry would be affected by the proposed inspection, that it would take approximately 1 workhour per sailplane to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $480, or $60 per sailplane.

These figures only take into account the costs of the proposed inspection and do not take into account the costs associated with any parts replacement that would be necessary if oil leakage or contamination is found. The FAA has no way of determining the number of sailplanes that would need parts replacement because of oil leakage or contamination.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Alexander Schleicher Segelflugzeugbau: Docket No. 98–CE–98–AD.

Applicability: Model ASH 26E sailplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each sailplane 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 sailplanes 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 in the body of this AD, unless already accomplished.

To detect and correct any oil-contaminated exhaust damper fairing caused by oil leakage in the red silicone tube of the rotor interior air cooling, which could result in an exhaust fire and/or an explosion, accomplish the following:

(a) Within the next calendar month after the effective date of this AD, inspect the red silicone tube of the rotor interior air cooling (just in front of the carburetor) for oil leaks and the heat damping layer of the lower exhaust damper fairing for oil contamination, in accordance with the Action section of Alexander Schleicher Technical Note No. 6, dated August 10, 1998. Prior to further flight, replace the applicable parts where oil leakage or contamination is found, in accordance with the applicable maintenance manual or other applicable FAA-approved document.

(b) 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 sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(d) Questions or technical information related to Alexander Schleicher Technical Note No. 6, dated August 10, 1998, should be directed to Alexander Schleicher GmbH & Co., Segelflugzeugbau, Postfach 60, 36163 Poppenhausen, Germany; telephone: ++49 (0) 6658–890; facsimile: ++49 (0) 6658–8923. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 98–347, dated September 10, 1998.

Issued in Kansas City, Missouri, on December 29, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–42 Filed 1–4–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–64]

Proposed Modification of Class D Airspace and Class E Airspace and Establishment of Class E Airspace; Rapid City, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class D airspace and Class E airspace and establish Class E airspace at Rapid City, SD. This action would amend the effective hours of the Class D surface area and the associated Class E airspace to coincide with the airport traffic control tower (ATCT). This action would also establish a Class E surface area when the ATCT is closed. The purpose of these actions is to clarify when two-way radio communication with the ATCT is required and to provide adequate controlled airspace for instrument approach procedures when the tower is closed.

DATES: Comments must be received on or before February 16, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–64, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–64.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination of the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D and associated Class E airspace at Rapid City, SD, by amending the effective hours to coincide with the ATCT hours of operation, and to

establish a Class E surface area during those times the ATCT is closed. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, Class E airspace areas designated as an extension to a Class D surface area are published in paragraph 6004, and Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace.

* * * * *

AGL SD D Rapid City, SD [Revised]

Rapid City Regional Airport, SD
(Lat. 44°02′43″N., long. 103°03′27″W.)
Ellsworth AFB, SD
(Lat. 44°08′42″N., long. 103°06′13″W.)

That airspace extending upward from the surface to and including 5,700 feet MSL within a 4.3-mile radius of the Rapid City Regional Airport, SD, excluding the portion north of a line between the intersection of the Rapid City Regional Airport 4.3-mile radius and the Ellsworth AFB, SD, 4.7-mile radius. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AGL SD E4 Rapid City, SD [Revised]

Rapid City Regional Airport, SD
(Lat. 44° 02′ 43″N., long. 103° 03′ 27″W.)
Ellsworth AFB, SD
(Lat. 44° 08′ 42″N., long. 103° 06′ 13″W.)
Rapid City VORTAC
(Lat. 43° 58′ 34″N., long. 103° 00′ 44″W.)
Ellsworth AFB TACAN
(Lat. 44° 08′ 20″N., long. 103° 06′ 06″W.)

That airspace extending upward from the surface within 2.6 miles each side of the Rapid City VORTAC 155°/335° radials extending from the 4.3-mile radius of the Rapid City Regional Airport to 7.0 miles southeast of the VORTAC and within 2.6 miles each side of the Ellsworth AFB TACAN 129° radial, extending from the Ellsworth AFB 4.7-mile radius of the airport to 7.0 miles southeast of the TACAN, excluding that airspace within the Rapid City, SD, Class D airspace area. This Class E airspace area is effective during the specific dates and times established in advance by 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.

* * * * *

AGL SD E2 Rapid City, SD [New]

Rapid City Regional Airport, SD
(Lat. 44° 02′ 43″N., long. 103° 03′ 27″W.)
Ellsworth AFB, SD
(Lat. 44° 08′ 42″N., long. 103° 06′ 13″W.)
Rapid City VORTAC
(Lat. 43° 58′ 34″N., long. 103° 00′ 44″W.)
Ellsworth AFB TACAN
(Lat. 44° 08′ 20″N., long. 103° 06′ 06″W.)

Within an 4.3-mile radius of the Rapid City Regional Airport, SD, excluding the portion north of a line between the intersection of the Rapid City Regional Airport 4.3-mile radius and the Ellsworth AFB, SD, 4.7-mile radius, and that airspace extending upward from the surface within 2.6 miles each side of the Rapid City VORTAC 155°/335° radials extending from the 4.3-mile radius of the Rapid City Regional Airport to 7.0 miles southeast of the VORTAC and within 2.6 miles each side of the Ellsworth AFB TACAN 129° radial, extending from the Ellsworth AFB 4.7-mile radius of the airport to 7.0 miles southeast of the TACAN, excluding that airspace within the Rapid City, SD, Class D airspace area. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on December 14, 1998.

Marueen Woods,

Manager, Air Traffic Division.

[FR Doc. 99–83 Filed 1–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 2, 3, 5, 10, 12, 16, 20, 25, 50, 54, 56, 58, 60, 70, 71, 200, 201, 202, 206, 207, 210, 211, 299, 300, 310, 312, 314, 316, 320, 333, 369, 510, 514, 520, 522, 524, 529, 800, 801, 807, 809, 812, and 860

[Docket No. 98N–0720]

Conforming Regulations Regarding Removal of Section 507 of the Federal Food, Drug, and Cosmetic Act; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to remove references to the repealed statutory provision of the Federal Food, Drug, and Cosmetic Act (the act), under which the agency certified antibiotic drugs. The agency is also proposing to remove references to the repealed antibiotic monograph regulations and to those regulations dealing with antibiotic applications. The agency is taking this action in accordance with provisions of the Food and Drug Administration Modernization Act of 1997 (FDAMA). This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**.

DATES: Submit written comments on or before March 22, 1999.

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

FOR FURTHER INFORMATION CONTACT:

For human drugs, Christine F. Rogers or Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

For animal drugs, Richard L. Arkin, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0141.

SUPPLEMENTARY INFORMATION:

I. Background

As described more fully in the related direct final rule, section 125(b) of FDAMA (Pub. L. 105–115) repealed section 507 of the act (21 U.S.C. 357) and made conforming amendments to the act and other provisions of Federal law. Section 507 of the act was the statutory provision under which the agency certified antibiotic drugs. FDA is proposing to make conforming amendments to Title 21 of the Code of Federal Regulations. This proposed rule removes citations to section 507 of the act. It also removes references to: Certification of antibiotics, the antibiotic certification regulations, specific antibiotic monographs, references to antibiotic drug applications, abbreviated antibiotic drug applications, and supplemental antibiotic drug applications.

II. Additional Information

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. This companion proposed rule and the direct final rule are identical. This companion proposed rule will provide the procedural framework to finalize the rule in the event the direct final rule receives significant adverse comments and is withdrawn. The comment period for this companion proposed rule runs concurrently with the comment period of the direct final rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule.

The amendments contained in this proposed rule are a direct result of the repeal of the statutory provision. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation document within 30 days after the comment period ends, and FDA intends the direct final rule to become effective 30 days after publication of the confirmation document. If FDA receives significant adverse comments, the agency will withdraw the direct final rule. FDA will proceed to respond to all of the comments received regarding the rule and, if appropriate, the rule will be finalized under this companion proposed rule using usual notice-and-comment procedures.

For additional information, see the corresponding direct final rule published elsewhere in the final rules section of this issue of the **Federal Register**. If FDA receives significant adverse comments, the agency will withdraw the direct final rule within 30 days after the comment period ends and will treat those comments as comments on this proposed rule. The agency will address the comments in a subsequent final rule. FDA will not provide additional opportunity for comment. A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impact of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires that if a rule has a significant impact on a substantial number of small entities, the agency must analyze regulatory options to minimize the economic impact on small entities. The agency certifies that the proposed rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The Unfunded Mandates Reform Act requires an agency to prepare a budgetary impact statement before issuing any rule likely to result in a Federal mandate that may result in expenditures by State, local, and tribal governments or the private sector of $100 million (adjusted annually for inflation) in any 1 year. These conforming amendments will not result in any increased expenditures by State, local, and tribal governments or the private sector. Because this proposed rule will not result in an expenditure of $100 million or more on any governmental entity or the private sector, no budgetary impact statement is required.

This proposed rule is intended to make conforming changes to FDA's regulations necessitated by repeal of the section 507 of the act that provided for the certification of antibiotic drugs. Accordingly, the agency believes that the proposed rule is necessary and that it is consistent with the principles of Executive Order 12866; that it is not a significant regulatory action under that Executive Order; that it will not have a significant impact on a substantial number of small entities; and that it is not likely to result in an annual expenditure in excess of $100 million.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (Pub. L. 104–13) is not required.

VI. Request for Comments

Interested persons may, on or before March 22, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. This comment period runs concurrently with the comment period for the direct final rule; any comments received will be considered as comments regarding the direct final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. In the event the direct final rule is withdrawn, all comments received will be considered comments on this proposed rule.

List of Subjects

21 CFR Part 2

Administrative practice and procedure, Cosmetics, Drugs, Foods.

21 CFR Part 3

Administrative practice and procedure, Biologics, Drugs, Medical devices.

21 CFR Part 5

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

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Parts 12 and 16

Administrative practice and procedure.

21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

21 CFR Part 25

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

21 CFR Part 50

Human research subjects, Prisoners, Reporting and recordkeeping requirements, Safety.

21 CFR Part 54

Biologics, Drugs, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 56

Human research subjects, Reporting and recordkeeping requirements, Safety.

21 CFR Part 58

Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 60

Administrative practice and procedure, Drugs, Food additives, Inventions and patents, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 70

Color additives, Cosmetics, Drugs, Labeling, Packaging and containers.

21 CFR Part 71

Administrative practice and procedure, Color additives, Confidential business information, Cosmetics, Drugs, Reporting and recordkeeping requirements.

21 CFR Parts 200 and 300

Drugs, Prescription drugs.

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 202

Advertising, Prescription drugs.

21 CFR Parts 206 and 299

Drugs.

21 CFR Parts 207 and 320

Drugs, Reporting and recordkeeping requirements.

21 CFR 210

Drugs, Packaging and containers.

21 CFR Part 211

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

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 316

Administrative practice and procedure, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 333

Labeling, Over-the-counter drugs.

21 CFR Part 369

Labeling, Medical devices, Over-the counter drugs.

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, 524, and 529

Animal drugs.

21 CFR Part 800

Administrative practice and procedure, Medical devices, Ophthalmic goods and services, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 807

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 809

Labeling, Medical devices.

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 860

Administrative practice and procedure, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 2, 3, 5, 10, 12, 16, 20, 25, 50, 54, 56, 58, 60, 70, 71, 200, 201, 202, 206, 207, 210, 211, 299, 300, 310, 312, 314, 316, 320, 333, 369, 510, 514, 520, 522, 524, 529, 800, 801, 807, 809, 812, and 860 be amended as follows:

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

1. The authority citation for 21 CFR part 2 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 335, 342, 346a, 348, 351, 352, 355, 360b, 361, 371, 372, 374; 15 U.S.C. 402, 409.

PART 3—PRODUCT JURISDICTION

2. The authority citation for 21 CFR part 3 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 360gg–360ss, 371(a), 379e, 381, 394; 42 U.S.C. 216, 262.

§ 3.2 [Amended]

3. Section 3.2 *Definitions* is amended in paragraph (k) by removing ''507,'' and ''antibiotic application,''.

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

4. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 61–63, 141–149, 321–394, 467f, 679(b), 801–886, 1031–1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1; 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223.

§ 5.31 [Amended]

5. Section 5.31 *Petitions under part 10* is amended by removing and reserving paragraphs (f)(2)(v), (f)(2)(vi), and (f)(2)(vii).

§ 5.70 [Amended]

6. Section 5.70 *Issuance of notice implementing the provisions of the Drug Amendments of 1962* is amended by removing ''sections 505 and 507'' and adding in its place ''section 505''.

§ 5.75 [Removed]

7. Section 5.75 *Designation of official master and working standards for antibiotic drugs* is removed.

§ 5.76 [Removed]

8. Section 5.76 *Certification of antibiotic drugs* is removed.

§ 5.78 [Removed]

9. Section 5.78 *Issuance, amendment, or repeal of regulations pertaining to antibiotic drugs* is removed.

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

10. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

§ 10.50 [Amended]

11. Section 10.50 *Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing* is amended by removing ''314.300,'' from paragraph (a)(2) and by removing and reserving paragraph (c)(11).

§ 10.55 [Amended]

12. Section 10.55 *Separation of functions; ex parte communications* is amended in paragraph (c) by removing ''314.300,'' from the first sentence.

§ 10.80 [Amended]

13. Section 10.80 *Dissemination of draft Federal Register notices and regulations* is amended in paragraph (g) by removing the phrase ''or a proposed or final antibiotic regulation''.

PART 12—FORMAL EVIDENTIARY PUBLIC HEARING

14. The authority citation for 21 CFR part 12 is revised to read as follows:

Authority: 21 U.S.C. 141–149, 321–393, 467f, 679, 821, 1034; 42 U.S.C. 201, 262, 263b–263n, 264; 15 U.S.C. 1451–1461; 5 U.S.C. 551–558, 701–721; 28 U.S.C. 2112.

§ 12.20 [Amended]

15. Section 12.20 *Initiation of a hearing involving the issuance, amendment, or revocation of a regulation* is amended by removing ''507(f),'' from the introductory text of paragraph (a), by removing the phrase ''or for an antibiotic petition in § 431.50'' from paragraph (a)(2)(i), and by removing and reserving paragraph (c).

§ 12.24 [Amended]

16. Section 12.24 *Ruling on objections and requests for hearing* is amended by removing ''314.300,'' from paragraphs (b)(6) and (c).

§ 12.87 [Amended]

17. Section 12.87 *Purpose; oral and written testimony; burden of proof* is amended by removing ''antibiotic,'' from the first sentence of paragraph (d).

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

18. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

§ 16.1 [Amended]

19. Section 16.1 *Scope* is amended by removing §§ 431.52, 433.2(d), 433.12(b)(5), 433.13(b), 433.14(b), 433.15(b), 433.16(b), and 514.210 from the list of regulatory provisions in paragraph (b)(2).

PART 20—PUBLIC INFORMATION

20. The authority citation for 21 CFR part 20 is revised to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

§ 20.100 [Amended]

21. Section 20.100 *Applicability; cross-reference to other regulations* is amended by removing and reserving paragraphs (c)(20) and (c)(21).

§ 20.117 [Amended]

22. Section 20.117 *New drug information* is amended by removing ''antibiotic applications,'' from paragraph (a)(3).

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

23. The authority citation for 21 CFR part 25 continues to read as follows:

Authority: 21 U.S.C. 321–393; 42 U.S.C. 262, 263b–264; 42 U.S.C. 4321, 4332; 40 CFR parts 1500–1508; E.O. 11514, 35 FR 4247, 3 CFR, 1971 Comp., p. 531–533, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1978 Comp., p. 123–124 and E.O. 12114, 44 FR 1957, 3 CFR, 1980 Comp., p. 356–360.

§ 25.5 [Amended]

24. Section 25.5 *Terminology* is amended by removing the phrase '', an abbreviated antibiotic application,'' from paragraph (b)(1).

§ 25.31 [Amended]

25. Section 25.31 *Human drugs and biologics* is amended by removing paragraph (f) and redesignating paragraph (g) as paragraph (f), by removing paragraph (h), and by redesignating paragraph (i) through paragraph (l) as paragraph (g) through paragraph (j).

PART 50—PROTECTION OF HUMAN SUBJECTS

26. The authority citation for 21 CFR part 50 is revised to read as follows:

Authority: 21 U.S.C. 321, 346, 346a, 348, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 241, 262, 263b–263n.

§ 50.1 [Amended]

27. Section 50.1 *Scope* is amended by removing '', 507(d),'' from the first sentence of paragraph (a) and removing ''507,'' from the last sentence of paragraph (a).

§ 50.3 [Amended]

28. Section 50.3 *Definitions* is amended by removing and reserving

paragraph (b)(11) and removing '', 507(d),'' from paragraph (c).

§ 50.23 [Amended]

29. Section 50.23 *Exception from general requirements* is amended in paragraph (d)(1) by removing the phrase ''(including an antibiotic or biological product)'' and adding in its place the phrase ''(including a biological product)''.

PART 54—FINANCIAL DISCLOSURE BY CLINICAL INVESTIGATORS

30. The authority citation for 21 CFR part 54 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c–360j, 371, 372, 373, 374, 375, 376, 379; 42 U.S.C. 262.

§ 54.4 [Amended]

31. Section 54.4 *Certification and disclosure requirements* is amended by removing ''507,'' from paragraph (a).

PART 56—INSTITUTIONAL REVIEW BOARDS

32. The authority citation for 21 CFR part 56 is revised to read as follows:

Authority: 21 U.S.C. 321, 346, 346a, 348, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 241, 262, 263b–263n.

§ 56.101 [Amended]

33. Section 56.101 *Scope* is amended by removing '', 507(d),'' from paragraph (a).

§ 56.102 [Amended]

34. Section 56.102 *Definitions* is amended by removing paragraph (b)(10), by redesignating paragraph (b)(11) through paragraph (b)(21) as paragraph (b)(10) through paragraph (b)(20), and by removing '', 507(d),'' from the first sentence of paragraph (c).

PART 58—GOOD LABORATORY PRACTICE FOR NONCLINICAL LABORATORY STUDIES

35. The authority citation for 21 CFR part 58 is revised to read as follows:

Authority: 21 U.S.C. 342, 346, 346a, 348, 351, 352, 353, 355, 360, 360b–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 262, 263b–263n.

§ 58.1 [Amended]

36. Section 58.1 *Scope* is amended by removing ''507,'' from paragraph (a).

§ 58.3 [Amended]

37. Section 58.3 *Definitions* is amended by removing and reserving paragraph (e)(9).

PART 60—PATENT TERM RESTORATION

38. The authority citation for 21 CFR part 60 is revised to read as follows:

Authority: 21 U.S.C. 348, 355, 360e, 360j, 371, 379e; 35 U.S.C. 156; 42 U.S.C. 262.

§ 60.3 [Amended]

39. Section 60.3 *Definitions* is amended by removing ''507(d),'' from paragraph (b)(5); by removing '', antibiotic drug,'' from paragraph (b)(10); and by removing ''or 507'' from paragraphs (b)(11)(i) and (b)(12)(i).

40. Section 60.22 is amended by revising paragraphs (a)(1) and (2) to read as follows:

§ 60.22 Regulatory review period determinations.

* * * * *

(a) * * *

(1) The testing phase begins on the date an exemption under section 505(i) of the Act becomes effective (or the date an exemption under former section 507(d) of the Act became effective) for the approved human drug product and ends on the date a marketing application under section 351 of the Public Health Service Act or section 505 of the act is initially submitted to FDA (or was initially submitted to FDA under former section 507 of the Act), and

(2) The approval phase begins on the date a marketing application under section 351 of the Public Health Service Act or section 505(b) of the Act is initially submitted to FDA (or was initially submitted under former section 507 of the Act) and ends on the date the application is approved.

* * * * *

PART 70—COLOR ADDITIVES

41. The authority citation for 21 CFR part 70 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 360b, 361, 371, 379e.

§ 70.10 [Amended]

42. Section 70.10 *Color additives in standardized foods, new drugs, and antibiotics* is amended by revising the heading to read ''*Color additives in standardized foods and new drugs*'', by revising the heading of paragraph (b) to read ''*New drugs.*'', and by removing the phrases ''or for certification of an antibiotic drug'' from the first sentence of paragraph (b)(1), ''or certification of an antibiotic drug'' from the first sentence of paragraph (b)(2), and ''or the request for certification of the antibiotic drug'' from paragraph (b)(3).

PART 71—COLOR ADDITIVE PETITIONS

43. The authority citation for 21 CFR part 71 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 351, 355, 360, 360b–360f, 360h–360j, 361, 371, 379e, 381; 42 U.S.C. 216, 262.

§ 71.2 [Amended]

44. Section 71.2 *Notice of filing of petition* is amended by removing the phrase ''or certifiable antibiotic'' from the last sentence of paragraph (a).

PART 200—GENERAL

45. The authority citation for 21 CFR part 200 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360e, 371, 374, 375.

PART 201—LABELING

46. The authority citation for 21 CFR part 201 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

47. Section 201.59 is amended by revising paragraph (a)(1) to read as follows:

§ 201.59 Effective date of §§ 201.56, 201.57, 201.100(d)(3), and 201.100(e).

(a) * * *

(1) If the drug is a prescription drug that is not a biologic and not subject to section 505 of the act (21 U.S.C. 355), and was not subject to former section 507 of the act (21 U.S.C. 357, repealed 1997), §§ 201.56, 201.57, and 201.100(d)(3) are effective on April 10, 1981.

* * * * *

§ 201.100 [Amended]

48. Section 201.100 *Prescription drugs for human use* is amended by removing ''or 507'' from paragraph (c)(2), and by removing ''or 507'' and ''or 507, respectively'' from paragraph (d)(1).

§ 201.150 [Amended]

49. Section 201.150 *Drugs; processing, labeling, or repacking* is amended by removing paragraphs (e) through (h).

PART 202—PRESCRIPTION DRUG ADVERTISING

50. The authority citation for 21 CFR part 202 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 352, 355, 360b, 371.

§ 202.1 [Amended]

51. Section 202.1 *Prescription-drug advertisements* is amended by removing

paragraph (e)(4)(ii) and redesignating paragraph (e)(4)(iii) as paragraph (e)(4)(ii), by removing the words ''paragraphs (e)(4)(i) and (ii)'' from newly redesignated paragraph (e)(4)(ii) and by adding in their place the words ''paragraph (e)(4)(i)'', by removing ''(e)(4)(iii)'' and by adding in its place ''(e)(4)(ii)'' in paragraph (e)(6)(i), by removing '', 507, or 512'' from paragraph (e)(6)(xvii), by removing the phrase ''or antibiotic'' from indefinitely stayed paragraph (e)(6)(ii)(*a*); and by removing the phrase ''or a certified or released antibiotic,'' from indefinitely stayed paragraph (e)(6)(ii)(*b*).

PART 206—IMPRINTING OF SOLID ORAL DOSAGE FORM DRUG PRODUCTS FOR HUMAN USE

52. The authority citation for 21 CFR part 206 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 371; 42 U.S.C. 262.

PART 207—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

53. The authority citation for 21 CFR part 207 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 360, 360b, 371, 374; 42 U.S.C. 262.

§ 207.20 [Amended]

54. Section 207.20 *Who must register and submit a drug list* is amended by removing the words ''an antibiotic application,'' from paragraph (c).

§ 207.21 [Amended]

55. Section 207.21 *Times for registration and drug listing* is amended by removing the words ''antibiotic application,'' from the second sentence of paragraph (a).

§ 207.25 [Amended]

56. Section 207.25 *Information required in registration and drug listing* is amended by removing ''507,'' and by removing the phrase ''new animal drug application number, or antibiotic application number'' from paragraph (b)(2) and by adding in its place the phrase ''or new animal drug application number'', by removing ''or 507'' from paragraph (b)(4), and by removing ''507,'' from paragraph (b)(5) and paragraph (b)(6).

§ 207.31 [Amended]

57. Section 207.31 *Additional drug listing information* is amended by removing the phrase ''or 507'' from paragraph (a)(1) and by removing ''507,'' from paragraphs (a)(2) and (a)(3), and paragraph (c).

§ 207.35 [Amended]

58. Section 207.35 *Notification of registrant; drug establishment registration number and drug listing number* is amended by removing the phrase '', or supplemental antibiotic application'' from paragraph (b)(3)(v).

§ 207.37 [Amended]

59. Section 207.37 *Inspection of registrations and drug listings* is amended by removing ''507,'' from paragraph (a)(2)(i).

PART 210—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PROCESSING, PACKING, OR HOLDING OF DRUGS; GENERAL

60. The authority citation for 21 CFR part 210 is revised to read as follows:

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

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

61. The authority citation for 21 CFR part 211 is revised to read as follows:

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

PART 299—DRUGS; OFFICIAL NAMES AND ESTABLISHED NAMES

62. The authority citation for 21 CFR part 299 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 358, 360b, 371.

§ 299.4 [Amended]

63. Section 299.4 *Established names for drugs* is amended by removing the phrase ''or a new antibiotic drug'' from the fifth sentence of paragraph (d).

PART 300—GENERAL

64. The authority citation for 21 CFR part 300 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 360b, 361, 371.

§ 300.50 [Amended]

65. Section 300.50 *Fixed-combination prescription drugs for humans* is amended by removing the words ''or antibiotic monograph'' from paragraph (b).

PART 310—NEW DRUGS

66. The authority citation for 21 CFR part 310 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

67. Section 310.502 is amended by revising the introductory text of paragraph (a) and removing and reserving paragraph (b) to read as follows:

§ 310.502 Certain drugs accorded new drug status through rulemaking procedures.

(a) The drugs listed in this paragraph have been determined by rulemaking procedures to be new drugs within the meaning of section 201(p) of the act. An approved new drug application under section 505 of the act and part 314 of this chapter is required for marketing the following drugs:

* * * * *

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

68. The authority citation for 21 CFR part 312 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371; 42 U.S.C. 262.

§ 312.2 [Amended]

69. Section 312.2 *Applicability* is amended by removing ''or 507'' from paragraph (a) and by removing ''or antibiotic drug'' from paragraph (d).

§ 312.3 [Amended]

70. Section 312.3 *Definitions and interpretations* is amended by removing '', antibiotic drug,'' from the paragraph defining ''Investigational new drug'' and by removing the phrase '', a request to provide for certification of an antibiotic submitted under section 507 of the Act,'' from the paragraph defining ''Marketing application''.

SUBPART E—DRUGS INTENDED TO TREAT LIFE–THREATENING AND SEVERELY–DEBILITATING ILLNESSES

71. The authority citation for 21 CFR part 312, subpart E is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 355, 371; 42 U.S.C. 262.

§ 312.81 [Amended]

72. Section 312.81 *Scope* is amended by removing '', antibiotic,'' from the introductory text.

73. Section 312.110 is amended by revising paragraph (b)(4) and by removing paragraph (b)(5) to read as follows:

§ 312.110 Import and export requirements.

* * * * *

(b) * * *

(4) This paragraph does not apply to the export of new drugs (including biological products, antibiotic drugs,

and insulin) approved or authorized for export under section 802 of the act (21 U.S.C. 382) or section 351(h)(1)(A) of the Public Health Service Act (42 U.S.C. 262(h)(1)(A)).

§ 312.120 [Amended]

74. Section 312.120 *Foreign clinical studies not conducted under an IND* is amended by removing ''or antibiotic drug'' from the last sentence of paragraph (a).

§ 312.130 [Amended]

75. Section 312.130 *Availability for public disclosure of data and information in an IND* is amended by removing ''or antibiotic drug'' from paragraph (b).

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

76. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371, 374, 379e.

77. The heading for part 314 is revised to read as set forth above.

78. Section 314.1 is amended by revising paragraph (a) to read as follows:

§ 314.1 Scope of this part.

(a) This part sets forth procedures and requirements for the submission to, and the review by, the Food and Drug Administration of applications and abbreviated applications to market a new drug under section 505 of the Federal Food, Drug, and Cosmetic Act, as well as amendments, supplements, and postmarketing reports to them.

* * * * *

§ 314.50 [Amended]

79. Section 314.50 *Content and format of an application* is amended by removing ''or 507'' from the introductory text of paragraph (d).

§ 314.81 [Amended]

80. Section 314.81 *Other postmarketing reports* is amended in paragraph (a) by removing the words ''sections 505(k) and 507(g)'' and by adding in their place the words ''section 505(k)''.

§ 314.92 [Amended]

81. Section 314.92 *Drug products for which abbreviated applications may be submitted* is amended by removing and reserving paragraph (a)(2).

§ 314.94 [Amended]

82. Section 314.94 *Content and format of an abbreviated application* is amended by removing and reserving paragraph (c) and paragraph (d)(3).

§ 314.96 [Amended]

83. Section 314.96 *Amendments to an unapproved abbreviated application* is amended by removing paragraph (c).

§ 314.98 [Amended]

84. Section 314.98 *Postmarketing reports* is amended in paragraph (a) by removing the phrase ''approved abbreviated antibiotic application under § 314.94 or'' and in paragraph (c) by removing the words ''sections 505(k) and 507(g)'' and by adding in their place the words ''section 505(k)''.

§ 314.100 [Amended]

85. Section 314.100 *Timeframes for reviewing applications and abbreviated applications* is amended in paragraph (a) by removing the phrase ''or of an application or abbreviated application for an antibiotic drug under section 507 of the act,''.

§ 314.101 [Amended]

86. Section 314.101 *Filing an application and an abbreviated antibiotic application and receiving an abbreviated new drug application* is amended by revising the heading to read ''*Filing an application and receiving an abbreviated new drug application*'', by removing the phrase ''or abbreviated antibiotic application'' each time it appears in this section, and by removing the phrase ''or abbreviated antibiotic'' in the first sentence of paragraph (a)(2).

§ 314.105 [Amended]

87. Section 314.105 *Approval of an application and an abbreviated application* is amended by removing the phrases ''or an abbreviated antibiotic application'' and ''or abbreviated antibiotic application'' from the first sentence of paragraph (a), by removing the fourth and sixth sentences of paragraph (a), and by removing the phrase ''or abbreviated antibiotic application'' from the first sentence of paragraph (b) both times it appears.

§ 314.110 [Amended]

88. Section 314.110 *Approvable letter to the applicant* is amended by removing the phrases ''or abbreviated antibiotic application'', ''or an abbreviated antibiotic application'', and ''or the abbreviated antibiotic application'' each time they appear in this section; by removing and reserving paragraph (a)(4); by removing '', or (a)(4)'' from the first sentence of paragraph (a)(5); and by removing the words ''under § 314.99'' from paragraph (a)(2) and paragraph (a)(5).

§ 314.120 [Amended]

89. Section 314.120 *Not approvable letter to the applicant* is amended by removing the phrase ''or abbreviated antibiotic application'' from the first sentence of the introductory text of paragraph (a) and from the third sentence of paragraph (a)(3), by adding the word ''or'' to the end of paragraph (a)(3), by removing and reserving paragraph (a)(4), and by removing the phrase ''(a)(3), or (a)(4)'' and adding in its place ''or (a)(3)'' in the first sentence of paragraph (a)(5).

§ 314.125 [Amended]

90. Section 314.125 *Refusal to approve an application or abbreviated antibiotic application* is amended by revising the heading to read ''*Refusal to approve an application*''; by removing the phrase ''or abbreviated antibiotic application'' each time it appears in this section; by removing the phrase '', or for an antibiotic publish a proposed regulation based on an acceptable petition under § 314.300,'' from the introductory text of paragraph (a); by removing the phrase ''or files a petition for an antibiotic proposing the issuance, amendment, or repeal of a regulation'' from paragraph (a)(2); and by removing ''or 507'' from paragraph (b)(2).

§ 314.126 [Amended]

91. Section 314.126 *Adequate and well-controlled studies* is amended in paragraph (a) by removing the word ''sections'' and adding in its place the word ''section'' and removing the words ''and 507'' from the third sentence and by removing the words ''and antibiotics'' from the fourth sentence.

§ 314.150 [Amended]

92. Section 314.150 *Withdrawal of approval of an application or abbreviated application* is amended by removing the phrase ''or, for an antibiotic, rescind a certification or release, or amend or repeal a regulation providing for certification under section 507 of the act and under the procedure in § 314.300,'' from the introductory text of paragraphs (a) and (b).

93. Section 314.170 is amended by revising the first sentence and by removing the phrase ''and approved antibiotic drugs'' from the second sentence to read as follows:

§ 314.170 Adulteration and misbranding of an approved drug.

All drugs, including those the Food and Drug Administration approves under section 505 of the act and this part, are subject to the adulteration and misbranding provisions in sections 501, 502, and 503 of the act. * * *

Subpart F [Removed and Reserved]

94. Subpart F, consisting of § 314.300, is removed and reserved.

95. Section 314.410 is amended by revising the heading, by removing the phrase ''or an antibiotic'' from paragraph (a)(1), by removing the phrase ''or, in the case of an antibiotic not exempt from certification under part 433, it is also certified or released'' from paragraph (a)(1)(i), by removing the phrases ''or an antibiotic'' and '', and, in the case of an antibiotic, it is certified or released,'' from paragraph (b)(1), and by revising paragraph (b)(3) to read as follows:

§ 314.410 Imports and exports of new drugs.

* * * * *

(b) * * *

(3) Insulin or an antibiotic drug may be exported without regard to the requirements in section 802 of the act if the insulin or antibiotic drug meets the requirements of section 801(e)(1) of the act.

§ 314.430 [Amended]

96. Section 314.430 *Availability for public disclosure of data and information in an application or abbreviated application* is amended by removing paragraph (e)(8) and in paragraph (f)(6) by removing ''sections 505(j) and 507'' and adding in its place ''section 505''.

§ 314.500 [Amended]

97. Section 314.500 *Scope* is amended by removing the phrase ''and antibiotic''.

§ 314.530 [Amended]

98. Section 314.530 *Withdrawal procedures* is amended by removing the phrase ''and antibiotics'' from paragraph (a).

PART 316—ORPHAN DRUGS

99. The authority citation for 21 CFR part 316 continues to read as follows:

Authority: 21 U.S.C. 360aa, 306bb, 360cc, 360dd, 371.

§ 316.3 [Amended]

100. Section 316.3 *Definitions* is amended by removing the phrase '', a request for certification of an antibiotic under section 507 of the act,'' from paragraph (b)(9).

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

101. The authority citation for 21 CFR part 320 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 371.

§ 320.38 [Amended]

102. Section 320.38 *Retention of bioavailability samples* is amended by removing ''or 507'' from paragraph (a).

§ 320.63 [Amended]

103. Section 320.63 *Retention of bioequivalence samples* is amended by removing ''or 507'' from the first sentence.

PART 333—TOPICAL ANTIMICROBIAL DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

104. The authority citation for 21 CFR part 333 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

§ 333.103 [Amended]

105. Section 333.103 *Definitions* is amended by removing paragraph (a) and by removing the designation for paragraph (b).

§ 333.110 [Amended]

106. Section 333.110 *First aid antibiotic active ingredients* is amended in paragraph (a) by removing the phrase '': *Provided*, That it meets the tests and methods of assay in § 448.510a(b)''; in paragraph (b) by removing the phrase '': *Provided*, That it meets the tests and methods of assay in § 448.513f(b)''; in paragraph (c) by removing the phrase '': *Provided*, That it meets the tests and methods of assay in § 446.510(b)''; in paragraph (d) by removing the phrase '': *Provided*, That it meets the tests and methods of assay in § 444.542a(b)''; in paragraph (e) by removing the phrase '': *Provided*, That it meets the tests and methods of assay in § 444.542b(b)''; and in paragraph (f) by removing the phrase '': *Provided*, That it meets the tests and methods of assay in § 446.581d(b)''.

§ 333.120 [Amended]

107. Section 333.120 *Permitted combinations of active ingredients* is amended in paragraph (a)(1) by removing the phrase '': *Provided*, That it meets the tests and methods of assay in § 448.510d(b)''; in paragraph (a)(2) by removing the phrase ''; *Provided*, That it meets the tests and methods of assay in § 448.510e(b)''; in paragraph (a)(3) by removing the phrase '': *Provided*, That it meets the tests and methods of assay in § 448.510f(b)''; in paragraph (a)(4) by removing the phrase '': *Provided*, That it meets the tests and methods of assay in § 448.513b(b)''; in paragraph (a)(5) by removing the phrase ''; *Provided*, That it meets the tests and methods of assay in § 448.513c(b)''; in paragraph (a)(6) by removing the phrase '': *Provided*, That it meets the tests and methods assay in § 448.513a(b)''; in paragraph (a)(7) by removing the phrase '': *Provided*, That is meets the tests and methods of assay in § 448.513e(b) of this chapter''; in paragraph (a)(8) by removing the phrase '': *Provided*, That it meets the tests and methods of assay in § 448.513d(b)''; in paragraph (a)(9) by removing the phrase '': *Provided*, That it meets the tests and methods of assay in § 444.542e(b)''; in paragraph (a)(10) by removing the phrase '': *Provided*, That it meets the tests, methods of assay, and potency in § 444.5421(b)''; in paragraph (a)(11) by removing the phrase '': *Provided*, That it meets the tests and methods assay in § 446.567b(b)''; in paragraph (a)(12) by removing the phrase '': *Provided*, That it meets the tests and methods assay in § 446.567c(b)''; in paragraph (b)(1) by removing the phrase '': *Provided*, That it meets the tests and methods of assay in § 448.510a(b)''; in paragraph (b)(2) by removing the phrase ''*Provided*, That it meets the tests and methods of assay in § 448.510e(b)''; in paragraph (b)(3) by removing the phrase '': *Provided*, That it meets the tests and methods of assay in § 448.510f(b) of this chapter''; in paragraph (b)(4) by removing the phrase ''; *Provided*, That it meets the tests and methods of assay in § 448.513c(b) of this chapter''; in paragraph (b)(5) by removing the phrase '': *Provided*, That it meets the tests and methods of assay in § 448.513a(b) of this chapter''; and in paragraph (b)(6) by removing the phrase '': *Provided*, That it meets the tests and methods of assay in § 444.5421(b) of this chapter''.

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER–THE–COUNTER SALE

108. The authority citation for 21 CFR part 369 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371.

PART 510—NEW ANIMAL DRUGS

109. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.45 [Removed]

110. Section 510.45 *Packaging requirements for drugs for animal use* is removed.

§ 510.110 [Amended]

111. Section 510.110 *Antibiotics used in food-producing animals* is amended by removing the phrase ''to amend or revoke antibiotic regulations under the provisions of section 507 of the act, or'' in paragraph (e), by removing the phrase

''(except certifiable antibiotics)'' in the first sentence of paragraph (f), and by removing the last sentence of paragraph (f).

PART 514—NEW ANIMAL DRUG APPLICATIONS

112. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 379e, 381.

§ 514.10 [Removed]

113. Section 514.10 *Confidentiality of data and information in an investigational new animal drug notice and a new animal drug application file for an antibiotic drug* is removed.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 520.1204 [Amended]

115. Section 520.1204 *Kanamycin sulfate, aminopentamide hydrogen sulfate, pectin, bismuth subcarbonate, activated attapulgite suspension* is amended in paragraph (a) by removing the phrase ''(the kanamycin used conforms to the standards of identity, strength, quality, and purity prescribed by § 444.30 of this chapter)''.

116. Section 520.1263a is amended by revising paragraph (a) to read as follows:

§ 520.1263a Lincomycin hydrochloride monohydrate tablets and sirup.

(a) *Specifications.* The sirup contains lincomycin hydrochloride equivalent to either 25 milligrams or 50 milligrams of lincomycin.

* * * * *

§ 520.1263b [Amended]

117. Section 520.1263b *Lincomycin hydrochloride monohydrate and spectinomycin sulfate tetrahydrate soluble powder* is amended by removing the first complete sentence in paragraph (a).

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

118. The authority citation for 21 CFR part 522 continues to read as follows:

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

119. Section 522.1204 is amended by revising paragraph (a) to read as follows:

§ 522.1204 Kanamycin sulfate injection.

(a) *Specifications.* Each milliliter of kanamycin sulfate injection veterinary contains either 50 or 200 milligrams of kanamycin.

* * * * *

§ 522.1484 [Amended]

120. Section 522.1484 *Neomycin sulfate sterile solution* is amended by removing the second sentence of paragraph (a) but retaining footnote 1 at the end of paragraph (a).

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

121. The authority citation for 21 CFR part 524 continues to read as follows:

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

§ 524.1200a [Amended]

122. Section 524.1200a *Kanamycin ophthalmic ointment* is amended by removing paragraph (a)(1) and by removing the designation for paragraph (a)(2).

123. Section 524.1200b is amended by revising paragraph (a) to read as follows:

§ 524.1200b Kanamycin ophthalmic aqueous solution.

(a) *Specifications.* The drug, which is in an aqueous solution including suitable and harmless preservatives and buffer substances, contains 10 milligrams of kanamycin activity (as the sulfate) per milliliter of solution.

* * * * *

§ 524.1204 [Amended]

124. Section 524.1204 *Kanamycin sulfate, calcium amphomycin, and hydrocortisone acetate* is amended by removing paragraph (a)(1), by redesignating paragraphs (a)(2)(i) through (a)(2)(iii) as paragraphs (a)(1)(i) through (a)(1)(iii), and by redesignating paragraph (a)(3) as paragraph (a)(2).

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

125. The authority citation for 21 CFR part 529 continues to read as follows:

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

§ 529.360 [Amended]

126. Section 529.360 *Cephalothin discs* is amended by removing the phrase '', comply with the requirements of § 460.1 of this chapter'' from paragraph (a) and adding in its place ''have a uniform potency of 30 micrograms cephalothin per disc''.

PART 800—GENERAL

127. The authority citation for 21 CFR part 800 is revised to read as follows:

Authority: 21 U.S.C. 321, 334, 351, 352, 355, 360e, 360i, 360k, 361, 362, 371.

PART 801—LABELING

128. The authority citation for 21 CFR part 801 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

PART 807—ESTABLISHMENT AND REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND DISTRIBUTORS OF DEVICES

129. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374.

§ 807.25 [Amended]

130. Section 807.25 *Information required or requested for establishment registration and device listing* is amended by removing '', 507,'' in paragraph (f)(3).

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

131. The authority citation for 21 CFR part 809 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 360b, 360c, 360d, 360h, 360i, 360j, 371, 372, 374, 381.

§ 809.5 [Removed]

132. Section 809.5 *Exemption from batch certification requirements for in vitro antibiotic susceptibility devices subject to section 507 of the act* is removed.

§ 809.6 [Removed]

133. Section 809.6 *Conditions on the effectiveness of exemptions of antibiotic susceptibility devices from batch certification requirements* is removed.

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

134. The authority citation for 21 CFR part 812 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381, 382, 383; 42 U.S.C. 216, 241, 262, 263b–263n.

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

135. The authority citation for 21 CFR part 860 continues to read as follows:

Authority: 21 U.S.C. 360c, 360d, 360e, 360i, 360j, 371, 374.

§ 860.84 [Amended]

136. Section 860.84 *Classification procedures for ''old devices''* is amended by removing the fourth sentence in paragraph (a).

Dated: December 12, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 99–141 Filed 1–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 315 and 601

[Docket No. 98D–0785]

Draft Guidance for Industry on Developing Medical Imaging Drugs and Biologics; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Availability of guidance; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until February 12, 1999, the comment period for the draft guidance for industry entitled ''Draft Guidance for Industry on Developing Medical Imaging Drugs and Biologics'' that appeared in the **Federal Register** of October 14, 1998 (63 FR 55067). FDA is taking this action in response to a request for an extension.

DATES: Written comments on the draft guidance may be submitted by February 12, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448, FAX 888–CBERFAX or 301–827–3844. Send two self-addressed adhesive labels to assist the office in processing your request. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Robert K. Leedham, Center for Drug Evaluation and Research (HFD–160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7510, or

George Q. Mills, Center for Biologics Evaluation and Research (HFM–573), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–5097.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 14, 1998 (63 FR 55067), FDA published a notice announcing the availability of a draft guidance document for industry entitled ''Developing Medical Imaging Drugs and Biologics.'' The draft guidance is intended to assist developers of drug and biological products used for medical imaging, as well as radiopharmaceutical drugs used in disease diagnosis, in planning and coordinating the clinical investigations of, and submitting various types of applications for, such products. The draft guidance also provides information on how the agency would interpret and apply provisions in proposed regulations, published in the **Federal Register** of May 22, 1998 (63 FR 28301), for in vivo radiopharmaceuticals used for diagnosis and monitoring. The draft guidance applies to medical imaging drugs that are used for diagnosis and monitoring and that are administered in vivo. The draft guidance is not intended to apply to possible therapeutic uses of these drugs or to in vitro diagnostic products. Interested persons were given until December 14, 1998, to submit written comments on the draft guidance.

FDA received a letter, dated December 4, 1998, from Alan M. Kirschenbaum, legal counsel for the Council on Radionuclides and Radiopharmaceuticals, requesting that the agency extend the comment period on the draft guidance by 60 days.

The draft guidance introduces several new and highly technical issues. Therefore, the agency has decided to reopen the comment period on the draft guidance until February 12, 1999, to allow the public more time to review and comment on its contents.

Interested persons may, on or before February 12, 1999, submit to the Dockets Management Branch (address above) written comments on the draft guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 28, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–72 Filed 1–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 801

[REG 119192–98]

RIN 1545–AW80

Establishment of a Balanced Measurement System

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the adoption by the IRS of a balanced system to measure organizational performance within the IRS. These proposed regulations further implement a requirement that all employees be evaluated on whether they provided fair and equitable treatment to taxpayers and bar use of records of tax enforcement results to evaluate or to impose or suggest goals for any employee of the IRS. These regulations implement sections 1201 and 1204 of the Internal Revenue Restructuring and Reform Act of 1998. These regulations affect internal operations of the IRS and the systems that agency employs to evaluate the performance of organizations within IRS and individuals employed by IRS. This document also provides notice of public hearing on these proposed regulations.

DATES: Written comments and electronic comments must be received by March 8, 1999. Outlines of oral comments to be presented at the public hearing scheduled for Thursday, May 13, 1999 at 10 a.m. must be received by Thursday, April 22, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–119192–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–119192–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on

the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Julie Barry (202) 401–4013; concerning submission of comments, the hearing, or to be placed on the building access list to attend the hearing, Michael Slaughter, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations to establish a Balanced System for Measuring Organizational and Individual Performance Within the Internal Revenue Service (26 CFR Part 801).

Section 1201 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA), Public Law 105–206 (112 Stat. 685, 713 *et seq.* (1998)), requires the Internal Revenue Service to establish a performance management system for those employees covered by 5 U.S.C 4302 that, inter alia, establishes ''goals or objectives for individual, group, or organizational performance (or any combination thereof), consistent with the Internal Revenue Service's performance planning procedures, including those established under the Government Performance and Results Act of 1993, division E of the Clinger-Cohen Act of 1966 * * *, Revenue Procedure 64–22 * * *, and taxpayer service surveys.'' It further requires the IRS to use ''such goals and objectives to make performance distinctions among employees or groups of employees,'' and to use ''performance assessments as a basis for granting employee awards, adjusting an employee's rate of basic pay, and other appropriate personnel actions * * *'' Finally, section 1201 expressly requires that any performance management system adopted by the IRS conform to the requirements of section 1204 of RRA.

Section 1204 of RRA provides that the IRS shall not use ''records of tax enforcement results'' in the evaluation of IRS employees or to suggest or impose production goals for such employees. It further provides that the IRS shall use the ''fair and equitable treatment of taxpayers by employees as one of the standards for evaluating employee performance.'' Finally, section 1204 requires that ''each appropriate supervisor'' certify quarterly in a letter to the Commissioner ''whether or not tax enforcement results are being used in a manner prohibited by'' that section.

Antecedents to Sections 1201 and 1204

Until the recent change, the Mission Statement for the IRS had provided, in part: ''The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost * * *'' Consistent with this Mission Statement, the IRS has long adhered to the principle that all IRS officials with discretion to make decisions regarding enforcement matters in individual cases should do so only on the basis of the correct application of the law to the facts of each individual case. It has also sought to give the taxpayers maximum efficiencies in its day-to-day operations and has applied many modern management techniques to measure and encourage such efficiencies.

In order to achieve these dual goals, the IRS has adopted a number of systems by which it sets goals for and measures the success of its various operating units, and directs the activities of its employees. The ultimate objective of these measurement systems is to help the IRS achieve its overall mission.

Measuring Organizational Performance

In General. The Government Performance and Results Act of 1993, Public Law 103–62 (107 Stat. 285 (Aug. 3, 1993)) (GPRA), requires the IRS and other federal agencies to establish a hierarchy of performance measures and goals applicable to various organizational units within their agencies. These performance measures and goals should be expressed in objective, quantifiable and measurable forms to define the level of performance to be achieved by a program activity.

As indicated by the General Accounting Office (''Executive Guide: Effectively Implementing the Government Performance and Results Act,'' (GAO/GGD–96–118 at 24)):

> [L]eading organizations * * * strive to align their activities and resources to achieve mission-related goals[;] they also seek to establish clear hierarchies of performance goals and measures. Under these hierarchies, the organizations try to link the goals and performance measures for each organizational level to successive levels and ultimately to the organization's strategic goals. They have recognized that without clear, hierarchically linked performance measures, managers and staff throughout the organization will lack straightforward roadmaps showing how their daily activities can contribute to attaining organizationwide strategic goals and mission.

The legislative history underlying passage of GPRA indicates that not only must performance goals be established on an hierarchal basis throughout an organization, but those goals must reflect the full range of the organization's objectives. As the Senate Report accompanying the Act indicates (S. Rep. No. 103–58, 103d Cong., 1st Sess. at 29 (1993)):

> The Committee believes agencies should develop a range of related performance indicators, such as quantity, quality, timeliness, cost, and outcome. A range is important because most program activities require managers to balance their priorities among several subgoals. * * * Reliance on any single one of these measures could create a perverse incentive for managers to achieve one subgoal at the expense of the others.

As a government agency responsible for collecting 95 percent of the nation's revenues, the IRS adopted, pursuant to GPRA and other statutes [1], a number of performance measures that focus on the amount of adjustments proposed by examination units or the dollars collected by collection offices. For example, the budgets submitted by the IRS since the mid-1990's have contained performance measures that were heavily focused upon enforcement revenue collected or protected. The two performance measures for field examination units contained in the FY 1997 budget request were examination dollars recommended and examination dollars recommended per employee (FTE). A similarly enforcement-focused set of measures applied to field collection functions: dollars collected, dollars collected per FTE, and average cycles per TDA/TDI (tax delinquency account/tax delinquency investigation) disposition.

Measures of Special Compliance Programs

The IRS, apart from requirements imposed upon it by statutes and regulations of general applicability, has periodically been required by Congress to establish and to report on other performance measures. For example, in connection with expected additional funding promised for FY 1995 through FY 1999 pursuant to a Compliance Initiative, the IRS made a commitment to generate $9.179 billion in additional enforcement revenues. It was expected both to track how those additional funds were employed and to provide

[1] Both the Chief Financial Officers Act of 1990, Pub. L. 101–576, 104 Stat. 2838 (1990), and Division E, National Defense Authorization Act for Fiscal Year 1996 (the Clinger-Cohen Act of 1996), Pub. L. 104–106, 110 Stat. 186, 679 (1996), also contain requirements that federal agencies establish performance measurement systems.

''quarterly reports * * * identifying the progress being made through these enhanced activities to collect taxes due.'' S. Rep. No. 103–286, 103d Cong., 2d Sess. at 40 (1994); see H.R. Rep. No. 103–534, 103d Cong., 2d Sess. at 33 (1994); ''IRS FY 1995 Compliance Initiatives Final Report,'' Document 9383 (Rev. 1–96), Catalog Number 21508R.

More recently, the appropriation for the IRS for FY 1998 provided additional monies for ''funding essential earned income tax credit compliance and error reduction initiatives.'' The Conference Report accompanying that appropriation bill stated (H.R. Conf. Rep. No. 105–284, 105th Cong.,1st Sess. at 64 (1997)) that ''the IRS should establish a method to track the expenditure of funds and measure the impact [of the additional funding] on compliance. The IRS shall submit quarterly reports to the Committee on Appropriations which identify the expenditures and the change in the rates of compliance.'' In the absence of accurate information regarding compliance rates, the IRS has attempted to comply with this congressional requirement by reporting, inter alia, on amounts of revenue protected or collected by various EITC compliance programs. See, e.g., ''IRS Tracking Earned Income Tax Credit Appropriation,'' Document 9383 (Rev. 6–98), Catalog Number 21508R.

Measuring the Performance of Employees

The IRS also must comply with a variety of government-wide mandates to measure the performance of individual employees. The civil service rules require that the IRS evaluate the performance of employees on an annual basis. Performance evaluations also figure in recommendations for awards, incentives, allowances or bonuses, an assessment of an employee's qualifications for promotion, reassignment or other change in duties, and the ranking of other than full-time permanent personnel for purposes of release/recall schedules. While these individual performance ratings are based upon the elements set forth in various workplans and job elements, a manager's success in achieving organizational goals will inevitably play an important role in any evaluation of his or her performance. Other employees' performance with respect to items set forth in their job elements will be viewed in light of these goals.

Past Criticisms

Over the years, the IRS has been repeatedly criticized for placing too much reliance upon tax enforcement measures it has adopted. The critics have charged that front-line personnel have felt pressured by performance measures that were focused on tax enforcement outcomes, such as dollars assessed per FTE or dollars collected per FTE, to take inappropriate enforcement actions in order to achieve perceived enforcement goals. The bulk of this criticism has focused on the impact such tax enforcement measures have had upon field personnel in the examination and collection functions.

For example, in 1955, a report by an advisory group appointed by the Chairman of the Joint Committee on Internal Revenue Taxation (The Internal Revenue Service: Its Reorganization and Administration, July 25, 1955, at 6) describes a 1954 initiative by the IRS to ''establish specific office standards of production [for examination personnel in regional and district offices], so that both supervisors and employees know what is considered normal.'' This advisory group reported that imposition of these standards ''appears to have caused a worsening of the enforcement picture.''

> [U]nder the established production quota system proper standards of individual performance and proper standards of examination are ignored in favor of number of returns examined. The established production quota procedure has too frequently reduced the agent's investigation to a cursory examination of readily available records and a quick look for a few obvious items on which a change can be made so as to close the case and meet the quota set.

In 1957 and again in 1959, questions were raised during hearings before the House Ways and Means Committee regarding IRS production quotas. ''Reorganization and Administration of the Internal Revenue Service,'' Hearings before the Subcommittee on Internal Revenue Taxation of the Committee of Ways and Means, 85th Cong., 1st Sess., at 118–119 (1957); ''Income Tax Revision, Panel Discussions before the Committee on Ways and Means, House of Representatives,'' 86th Cong., 1st Sess. at 805, 808 (1959); ''Compendium of Papers on Broadening the Tax Base Submitted to the Committee of Ways and Means,'' 86th Cong., 1st Sess. at 1527, 1533 (1959).

In November of 1959, the IRS issued a revised policy statement that provided, in part:

> If the duties of the position require the exercise of judgment based on detailed knowledge of laws and regulations or involve material factors of technical or professional judgment, performance must be evaluated in the light of the actual cases or other assignments handled, and no quantitative measurement may be utilized which does not take such differences into account. Dollar production shall not be used as the measurement of any individual's performance.

Policy Statement P–1200–9, Approved Nov. 24, 1959

Questions regarding ''the rating of revenue agents on the basis of numbers of examinations made and amounts of additional tax recommended'' were again raised during the 1961 confirmation hearings held for Commissioner-designate Caplin. Hearings Before the Committee on Finance, United States Senate, 87th Cong., 1st Sess., at 14–15 (1961). Following his confirmation, Commissioner Caplin announced in July of 1961 that the IRS was embarking on a ''New Direction,'' which was designed to counter what he described as the ''undue emphasis'' placed upon production statistics and the ''adverse effect'' the perception that production statistics formed the ''main basis'' for evaluation of offices and individuals had upon examination quality. Under this ''New Direction,'' production goals and statistics would be de-emphasized, statistical data would be given more limited circulation and qualitative measures of performance would be adopted. ''New Audit Program Concepts: Views of Commissioner Caplin on Evaluation of Individuals, Programs and Offices in the Audit Activity.''

The following year, Commissioner Caplin issued a Special Message to All Audit Personnel, discussing some misunderstandings that had arisen regarding the new audit program. The Commissioner indicated that while supervisors were not allowed to evaluate performance on the basis of statistics or to pressure agents to produce deficiencies at the cost of inadequate audits or inequities to the taxpayer, nothing in the new audit program prohibited supervisors from keeping track of the quality and amount of work produced by agents. Indeed, ''this is exactly what the supervisor of a group of agents is expected to do.'' The Message went on to state ''Special Message from the Commissioner,'' dated September 7, 1962, at 2:

> More serious than these misunderstandings, is the fact that enforcement results have fallen off very substantially. Despite having 1,022 more agents and office auditors in FY 62 than in FY 61, the number of returns examined decreased by 13,000, while additional taxes and penalties recommended decreased by $66 million.
>
> You can readily see how this drop-off endangers our Long Range Plan for gradually increasing our manpower and doing our

work more effectively. Under this plan, we have been allowed almost 10,000 additional people over the last three years, and it calls for the addition of about 24,000 more by 1968. Yet, when a substantial increase in staff is followed by this kind of a drop in our enforcement results, the appropriating authorities naturally begin to wonder about the wisdom of financing the rest of our proposed expansion.

Issues regarding the IRS' use of production statistics also came up during Commissioner Alexander's 1973 confirmation hearings before the Senate Finance Committee. When questioned about his opinion toward production quotas, Commissioner Alexander responded that he was completely opposed to their use. Hearings Before the Committee on Finance, United States Senate, 93d Cong., 1st Sess., at 4–5 (1973).

In November of 1973, the IRS adopted the current version of Policy Statement P–1–20, revising its policies regarding the use of records of tax enforcement results and prohibiting absolutely the use of enforcement statistics to evaluate the performance of enforcement personnel; this statement permitted the accumulation and use of enforcement statistics only for ''long-range planning, financial planning, allocation of resources, work planning and control, effective functional management, or other related staffing utilization systems and plans.'' In an accompanying Special Message to all Enforcement Personnel, Commissioner Alexander stated that this prohibition was applicable to all personnel who exercised judgment in determining tax liability or the ability to pay. Commissioner Alexander further declared, ''[i]ndividual case or dollar goals—formal, informal, or implied—are not permitted and will not be tolerated.''

During 1974, Senate Appropriations Committee hearings again focused on allegations that taxpayers were being mistreated as a result of production quotas (both case closings and dollar amounts). A number of witnesses and the Committee chairman expressed concerns that individual production statistics were being used to evaluate field employees, notwithstanding the existing policy. Testimony during those hearings also indicated that pressure to increase the number of cases closed in Collection directly led to inappropriate seizures. Hearings Before the Subcommittee on the Department of the Treasury, U.S. Postal Service, and General Government Appropriations of the Committee on Appropriations, United States Senate, 93d Cong., 2d Sess., at 2–25, 520, 543–546, 574–584, 586–601, 653–670 (1974); see also, ''Taxpayer Assistance and Compliance Programs,'' Hearings before the Senate Committee on Appropriations, 93d Cong., 1st Sess. at 41–46, 568–569, 642–643, 680–681 (1974).

In 1988, the Senate Appropriations Committee held hearings focusing again on allegations that the IRS' use of enforcement statistics to evaluate programs and personnel had led to inappropriate enforcement actions. Treasury, Postal Service and General Government Appropriations, Fiscal Year 1989, Before the Committee on Appropriations, 100th Cong., 2d Sess. at 588–590 (1988). On November 10, 1988, the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647 (102 Stat. 3734 (1988)) (TBOR 1) was enacted. Section 6231 of that measure prohibits the use of records of tax enforcement results:

> (1) To evaluate employees directly involved in collection activities and their immediate supervisors, or
>
> (2) To impose or suggest production quotas or goals [for such employees and supervisors].

During the appropriation hearings for FY 1989, Commissioner Gibbs testified about the TBOR 1 prohibition (Treasury, Postal Service and General Government Appropriations, Fiscal Year 1989, Before the Senate Committee on Appropriations, 100th Cong., 2d Sess. at 589 (1988)):

> The problem that I have with our policy statement—that policy statement, by the way, being in the taxpayer bill of rights—is that it tells our people what not to do. It says, ''Don't use enforcement statistics.'' * * * I don't think that this helps someone on the front line very much to tell them what not to do.
>
> What we have started, within the last 18 months that I have been the Commissioner, is to begin to develop at the working level criteria as to what constitutes a quality collection action, what constitutes a quality examination action. It is an entirely different approach to collection and examination, trying to train the people as to how to approach what they are doing so that if they do it the right way, the numbers will flow. The idea is to get away from simply dollar amounts, comparing one another in terms of how they are doing with respect to collections, or seizures, or anything like that.

The General Accounting Office has expressed a somewhat different view of the appropriate use of enforcement results to measure IRS performance. Its December 10, 1991, report on ''IRS' Implementation of the 1988 Taxpayer Bill of Rights'' stated (GAO/GGD–92–23 at 14–15):

> In an October 1987 letter to the Chairmen of the House Committee on Ways and Means and the Senate Committee on Finance, we commented on various proposals to prohibit the use of collection statistics in performance evaluations. Our position then and now is that collection statistics should not be the only indicator of performance but, along with other factors, could very well be a useful tool in evaluating employees. We pointed out that relying on a single factor can place more emphasis on that factor than on overall performance. We said that it is not totally inappropriate to generally consider the amount of revenues collected as part of an employee's evaluation if that consideration is only one of several factors under review. We added that setting arbitrary quotas for amounts collected, property seized, or cases closed cannot be justified in evaluating performance, particularly because of the negative impact that trying to achieve those quotas can have on taxpayers.

In its May 11, 1993, report on ''Tax Administration: New Delinquent Tax Collection Methods for IRS'' (GAO/GGD093–67 at 9), GAO reiterated this view:

> As we have stated in the past, IRS should be able to use collection performance as a criterion in determining compensation and rewards for individual collectors. We believe that information such as taxes collected is a reasonable basis on which to judge the performance of employees whose job it is to collect taxes as long as other criteria, such as fair and courteous treatment of taxpayers, are also evaluated.

In a similar vein, a December 23, 1993, report by the GAO on the offer in compromise program (''Tax Administration: Changes Needed to Cope with Growth in Offer in Compromise Program'' (GAO/GGD–94–47 at 24) indicated:

> The Commissioner of Internal Revenue should develop the indicators necessary to evaluate the Offer in Compromise Program as a collection and compliance tool. The indicators should be based on accurate data and include (1) the yield of the program in terms of costs expended and amounts collected, (2) the amount of revenues collected that would not have been collected through other collection means. * * *

In September 1997, the Senate Finance Committee held three days of widely-publicized oversight hearings on the Internal Revenue Service. During these hearings, several IRS employees testified that IRS' performance measurement system was creating an environment in which they felt pressured to achieve certain quantitative goals for tax enforcement results (such as dollars recommended or collected). In his testimony at the conclusion of these hearings, the Acting Commissioner responded to the concerns that had been raised about the negative impact of the IRS performance measurement system by announcing a number of immediate changes in the system. In particular, he announced that IRS would suspend the comparative

ranking of its 33 district offices and suspend distribution of any goals related to revenue production to field offices. ''Practices and Procedures of the Internal Revenue Service,'' Hearings before the Committee on Finance, United States Senate, 105th Cong., 1st Sess., at 3, 105–106, 123–128, 153, 155–156, 162–163, 206–209, 212–213, 303–304, 310, 317–318, 320–322, 325–326, 330, 333, 351–356.

Following these hearings, the IRS Office of Chief Inspector undertook three management audits to determine how enforcement statistics were then being used as part of the IRS performance measurement system. See, ''Review of the Use of Statistics and the Protection of Taxpayer Rights in the Arkansas-Oklahoma District Collection Field Function,'' Internal Audit Reference Number 380402 (December 5, 1997); ''Use of Enforcement Statistics in the Collection Field Function,'' Internal Audit Reference Number 081904 (January 12, 1998); ''Examination Division's Use of Performance Measures and Statistics,'' Internal Audit Reference Number 084303 (July 7, 1998). These three inquiries generally confirmed that IRS performance measures were focused largely on enforcement goals and productivity as defined by statistics relating to dollars recommended, assessed or collected, or other enforcement actions taken. They found a lack of corresponding emphasis on quality casework, adherence to law, and protection of taxpayer rights.

In order to deal with specific allegations of misconduct made during the September hearings, or discovered in the course of the management audits described above, the IRS Office of Chief Inspector also undertook a number of individual investigations. The Commissioner then established a Special Review Panel of career executives from outside the IRS to review the evidence and to recommend appropriate personnel actions. The Special Review Panel issued a Report to the Commissioner in August 1998. In its Report, the Special Review Panel agreed with earlier conclusions that IRS had responded to external pressures to close the revenue gap through improved productivity by shifting management emphasis to goals and measures that placed a heavy emphasis on use of enforcement statistics. See also ''IRS Personnel Administration: Use of Enforcement Statistics in Employee Evaluations'' (GAO/GGD–99–11, November 30, 1998).

Internal Revenue Service Restructuring and Reform Act of 1998

Sections 1201 and 1204 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA) represent the most recent legislative action regarding performance measures used by the IRS. Section 1201 directs the IRS, consistent with its current performance planning procedures, including those established under the GPRA, to establish a performance management system that will establish ''goals or objectives for individual, group, or organizational performance.'' The IRS is directed to use this performance system in the evaluation of employees or groups of employees, in determining salary adjustments and awards, and in other personnel matters. The Conference Report accompanying RRA (H. R. Conf. Rep. No. 105–599, 105th Cong., 2d Sess., at 228 (June 24, 1998) indicates that ''in no event would performance measures be used which rank employees or groups of employees based solely on enforcement results, establish dollar goals for assessments or collections, or otherwise undermine fair treatment of taxpayers.''

Section 1204 of RRA repealed section 6231 of TBOR 1 and replaced TBOR 1's prohibition on the use of ''records of tax enforcement results'' to evaluate or to impose or suggest goals for personnel directly involved in collection activity with a prohibition against using such records of tax enforcement results to evaluate, or to impose or suggest production quotas or goals for, any IRS ''employee.''

Explanation of Provisions

Proposed Effective Date

These regulations are proposed to be effective thirty days after the date of publication in the **Federal Register** of the final regulations.

Balanced Measurement System

These proposed regulations provide guidance and direction for the establishment of a balanced performance measurement system for the Internal Revenue Service. They also provide guidance for implementing the restrictions on the use of ''records of tax enforcement results'' in evaluating, or imposing or suggesting goals for employees and for establishing ''fair and equitable treatment of taxpayers'' as one of the standards for evaluating employees.

These proposed regulations establish a new balanced system for measuring the performance of and establishing performance goals for various operational units within the Internal Revenue Service. The three elements of this balanced measurement system are (1) Customer Satisfaction Measures, (2) Employee Satisfaction Measures and (3) Business Results Measures. These measures will, consistent with GPRA, be based on ''quantifiable and measurable'' data, and will be numerically scored.

The proposed regulations do not provide procedures for certifying whether or not records of tax enforcement results have been used in a manner prohibited by section 1204. Subsequent guidance will provide that information.

a. Customer Satisfaction

To measure customer satisfaction, the IRS will develop data from customer satisfaction surveys it receives from a statistically valid sample of taxpayers with whom it has dealt. Among other things, taxpayers will be asked to provide information regarding whether they were treated courteously and professionally, whether they were informed of their rights and whether they were given an opportunity to voice their concerns and adequate time to respond to IRS requests. Using data derived from these surveys, the IRS will derive quantitative indices of customer satisfaction which will be used to measure progress in achieving customer satisfaction goals.

b. Employee Satisfaction

To measure employee satisfaction, the IRS will utilize an employee survey that permits employees to provide, on an anonymous basis, their assessment of the wide variety of factors that determine whether employees believe that the work environment permits them to perform their duties in a professional manner. Among other items included in the employee survey, the questionnaires should elicit information regarding employees' assessment of the quality of supervision and the adequacy of training and support services. As in the case of the Customer Satisfaction measures, the goals and the accomplishments of units subject to the balanced measurement system will be expressed in quantified form.

c. Business Results

The IRS will employ two parallel avenues to measure business results.

1. Quality Measures

The first of these approaches will focus on the quality of the work done in a sample of cases that were worked on by employees. Such reviews will be conducted of a statistically valid sample of cases worked on by units designated by the Commissioner, such as a

collection or examination unit. A staff of personnel specially dedicated to the task will review and numerically score the quality of work done by IRS personnel. These reviews will focus on such factors as whether IRS personnel provided proper and timely service to the taxpayer, properly analyzed the facts, correctly applied the law, protected taxpayer rights by following applicable IRS policies and procedures, devoted an appropriate amount of time to the case, made appropriate judgments regarding liability for tax and ability to pay and provided accurate answers to tax law or account questions posed by callers.

2. Quantity Measures

The quantity measures element of the business results measure will focus exclusively on outcome-neutral production data. Accordingly, as described in the regulation, data concerning the enforcement outcome in cases, such as the dollar amount of audit adjustments, the numbers of liens filed or levies served, and the number of referrals for criminal investigation, would be excluded from the production data used in the quantity measures. On the other hand, outcome-neutral production data, such as cases closed, time per closing or cycle time, which do not reflect the outcome produced by any IRS official's exercise of judgment in determining liability for tax or the collection mechanism to be employed may be used in determining the production element of the business results measures. The IRS has determined, however, that as a matter of policy such outcome-neutral production data may not be used to set goals for or for evaluating any non-supervisory employee with tax enforcement responsibilities.

Further, an organization with enforcement responsibilities may not be given a goal or an evaluation based on enforcement-neutral production data regarding matters calling for the exercise of judgment with respect to tax enforcement results unless that goal or evaluation constitutes only one element in a set of goals or one element in an evaluation based also upon the balanced measurement system.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulation and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, May 13, 1999, beginning at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the time to be devoted to each topic by Thursday, April 22, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Julie A. Barry, Office of Assistant Chief Counsel (General Legal Services). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 801

Government employees, Organization and functions (Government agencies).

Proposed Amendments to the Regulations

Accordingly, 26 CFR Chapter I is proposed to be amended by adding part 801 to Subchapter H to read as follows:

PART 801—BALANCED SYSTEM FOR MEASURING ORGANIZATIONAL AND INDIVIDUAL PERFORMANCE WITHIN THE INTERNAL REVENUE SERVICE

Sec.

Authority: 5 U.S.C 9501 *et seq.*; secs. 1201, 1204, Pub. L. 105–206, 112 Stat. 685, 715–716, 722 (26 U.S.C. 7804 note).

§ 801.1 Balanced performance measurement system; in general.

(a) *In general.* The regulations in this part 801 implement the provisions of sections 1201 and 1204 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–106, 112 stat. 685, 715–716, 722) and provide rules relating to the establishment by the Internal Revenue Service of a balanced performance measurement system.

(b) *Effective date.* This part 801 is effective thirty days after the date these regulations are published as final regulations in the **Federal Register**.

§ 801.2 Balanced performance measurement system.

(a) *In general.* Modern management practice and various statutory and regulatory provisions require the IRS to set performance goals for organizational units and to measure the results achieved by those organizations with respect to those goals. To fulfill these requirements, the IRS has established a balanced performance measurement system, composed of three elements: Customer Satisfaction Measures; Employee Satisfaction Measures; and Business Results Measures. The IRS is likewise required to establish a performance evaluation system for individual employees.

(b) *Measuring organizational performance*—(1) *In general.* The performance measures that comprise the balanced measurement system will, to the maximum extent possible, be stated in objective, quantifiable and measurable terms and, subject to the limitation set forth in paragraph (b)(2) of

this section, will be used to measure the overall performance of various operational units within the IRS. In addition to implementing the requirements of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, 112 Stat. 685, the measures described here will, where appropriate, be used in performance goals and performance evaluations established, inter alia, under Division E, National Defense Authorization Act for Fiscal Year 1996 (the Clinger-Cohen Act of 1996), Pub. L. 104–106, 110 Stat. 186, 679; the Government Performance and Results Act of 1993, Pub. L. 103–62, 107 Stat. 285; and the Chief Financial Officers Act of 1990, Pub. L. 101–576, 108 Stat. 2838.

(2) *Limitation—quantity measures* (as described in § 801.5) will not be used to evaluate the performance of or to impose or suggest production goals for any organizational unit with employees who are responsible for exercising judgment with respect to tax enforcement results (as defined in § 801.5) except in conjunction with an evaluation or goals based also upon Customer Satisfaction Measures, Employee Satisfaction Measures, and Quality Measures.

(c) *Measuring individual performance.* All employees of the IRS will be evaluated according to the critical elements and standards or other performance criteria established for their positions. In accordance with the requirements of 5 U.S.C. 4312 and 9508 and section 1201 of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206 (112 Stat. 685), (as is appropriate to the employee's position), the performance criteria for each position will be composed of elements that support the organizational measures of Customer Satisfaction, Employee Satisfaction and Business Results; however, such organizational measures will not directly determine the evaluation of individual employees.

(1) *Fair and equitable treatment of taxpayers.* In addition to all other criteria required to be used in the evaluation of employee performance, all employees of the IRS will be evaluated on whether they provided fair and equitable treatment to taxpayers.

(2) *Senior Executive Service and special positions.* Employees in the Senior Executive Service will be rated in accordance with the requirements of 5 U.S.C. 4312 and employees selected to fill positions under 5 U.S.C. 9503 will be evaluated pursuant to workplans, employment agreements, performance agreements or similar documents entered into between the Internal Revenue Service and the employee.

(3) *General workforce.* The performance evaluation system for all other employees will:

(i) Establish one or more retention standards for each employee related to the work of the employee and expressed in terms of individual performance; and—

(A) Require periodic determinations of whether each employee meets or does not meet the employee's established retention standards; and

(B) Require that action be taken, in accordance with applicable laws and regulations, with respect to employees whose performance does not meet the established retention standards.

(ii) Establish goals or objectives for individual performance consistent with the IRS's performance planning procedures; and—

(A) Use such goals and objectives to make performance distinctions among employees or groups of employees; and (B) Use performance assessments as a basis for granting employee awards, adjusting an employee's rate of basic pay, and other appropriate personnel actions, in accordance with applicable laws and regulations.

(4) *Limitations.* (i) No employee of the IRS may use records of tax enforcement results (as defined in § 801.5) to evaluate any other employee or to impose or suggest production quotas or goals for any employee.

(A) For purposes of the limitation contained in this paragraph (c)(4), employee has the meaning as defined in 5 U.S.C. 2105(a).

(B) For purposes of the limitation contained in this paragraph (c)(4), evaluate includes any process used to appraise or measure an employee's performance for purposes of providing the following:

(*1*) Any required or requested performance rating.

(*2*) A recommendation for an award covered by Chapter 45 of Title 5; 5 U.S.C. 5384; or section 1201(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206 (112 Stat. 685, 713–716).

(*3*) An assessment of an employee's qualifications for promotion, reassignment or other change in duties.

(*4*) An assessment of an employee's eligibility for incentives, allowances or bonuses.

(*5*) Ranking of employees for release/recall and reductions in force.

(ii) Employees who are responsible for exercising judgment with respect to tax enforcement results (as defined in § 801.5) in cases concerning one or more taxpayers may be evaluated with respect to work done on such cases only on the basis of information derived from a review of the work done on the taxpayer cases handled by such employee.

(iii) Performance measures based in whole or in part on Quantity Measures (as described in § 801.5) will not be used to evaluate the performance of or to impose or suggest goals for any non-supervisory employee who is responsible for exercising judgment with respect to tax enforcement results (as defined in § 801.5).

§ 801.3 Customer satisfaction measures.

The customer satisfaction goals and accomplishments of operating units will be determined on the basis of data derived from questionnaires, surveys and other types of information gathering mechanisms. Surveys designed to measure customer satisfaction for a particular work unit will be distributed to a statistically valid sample of the taxpayers served by that operating unit and will be used to measure whether those taxpayers believe that they received courteous, timely and professional treatment by the IRS personnel with whom they dealt. Taxpayers will be permitted to provide information requested for these purposes under conditions that guarantee them anonymity.

§ 801.4 Employee satisfaction measures.

The numerical ratings to be given operating units within the IRS for employee satisfaction will be determined on the basis of information derived from a questionnaire which will be distributed to all employees of the operating unit; the employees will be permitted to provide information on an anonymous basis. Data from these surveys will measure, among other factors bearing upon employee satisfaction, the quality of supervision and the adequacy of training and support services.

§ 801.5 Business results measures.

(a) *In general.* The business results measures will consist of numerical scores determined under the Quality Measures and the Quantity Measures described elsewhere in this section.

(b) *Quality measures.* The quality measure will be determined on the basis of a review by a specially dedicated staff within the IRS of a statistically valid sample of work items handled by certain functions or organizational units determined by the Commissioner or his delegate such as the following:

(1) *Examination and collection units and Automated Collection System units (ACS).* The quality review of the handling of cases involving particular

taxpayers will focus on such factors as whether IRS personnel devoted an appropriate amount of time to a matter, properly analyzed the issues presented, developed the facts regarding those issues, correctly applied the law to the facts, and complied with statutory, regulatory and IRS procedures, including timeliness, adequacy of notifications and required contacts with taxpayers.

(2) *Toll-free telephone sites.* The quality review of telephone services will focus on such factors as whether IRS personnel provided accurate tax law and account information.

(3) *Other workunits.* The quality review of other workunits will be determined according to criteria prescribed by the Commissioner or his delegate.

(c) *Quantity measures.* The quantity measures will consist of outcome-neutral production and resource data, such as the number of cases closed, work items completed, hours expended and similar inventory, workload and staffing information, that does not contain information regarding the tax enforcement result reached in any case involving particular taxpayers.

(d) *Definitions*—(1) *Tax enforcement result.* A *tax enforcement result* is the outcome produced by an IRS employee's exercise of judgment recommending or determining whether or how the IRS should pursue enforcement of the tax law with respect to any assessed or unassessed tax.

(i) *Examples of data containing information regarding tax enforcement results.* The following are examples of data containing information regarding tax enforcement results: number of liens filed; number of levies served; number of seizures executed; dollars assessed; dollars collected; full pay rate; no change rate; and number of fraud referrals.

(ii) *Examples of data that do not contain information regarding tax enforcement results.* The following are examples of data that do not contain information regarding tax enforcement results: number of cases closed; time per case; direct examination time/out of office time; cycle time; number or percentage of overage cases; inventory information; toll-free level of access; talk time; and data derived from a quality review or from a review of an employee's or a workunit's work on a case, such as the number or percentage of cases in which correct examination adjustments were proposed or appropriate lien determinations were made.

(iii) *Records of tax enforcement results. Records of tax enforcement results* are data, statistics, compilations of information or other numerical or quantitative recordations of the tax enforcement results reached in one or more cases, but does not include information, including the tax enforcement result, regarding an individual case to the extent the information is derived from a review of an employee's or a workunit's work on individual cases.

(e) *Permitted uses of records of tax enforcement results.* Records of tax enforcement results may be used for purposes such as forecasting, financial planning, resource management, and the formulation of case selection criteria.

(f) *Examples.* The following examples illustrate the rules of this section:

Example 1. In conducting a performance evaluation, a supervisor may take into consideration information showing that the employee had failed to propose an appropriate adjustment to tax liability in one of the cases the employee examined, provided that information is derived from a review of the work done on the case. All information derived from such a review of individual cases handled by an employee, including time expended, issues raised, and enforcement outcomes reached may be considered in setting goals or evaluating the employee.

Example 2. A supervisor may not establish a goal for proposed adjustments in a future examination, even though the goal was derived from analyses of previously-handled cases, because such enforcement goals are not based upon an analysis of the newly-assigned case.

Example 3. A headquarters unit may use records of tax enforcement results to develop methodologies and algorithms for use in selecting tax returns to audit.

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 99–110 Filed 1–4–99; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA40–1–7338b; FRL–6207–9]

Approval and Promulgation of Implementation Plan Louisiana; Nonattainment Major Stationary Source Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to approve a revision to the Louisiana State Implementation Plan (SIP), Title 33 of the Louisiana Administrative Code Chapter 5 Section 504, ''Nonattainment New Source Review Procedures.'' The purpose of this revision is to allow major stationary sources, emitting at least 100 tons per year of volatile organic compounds, to offset emissions within the source by an internal offset ratio of at least 1.3 to 1. If the internal offset condition is met, then the requirement to apply the Lowest Achievable Emission Rates shall be lifted. In the final rules section of this **Federal Register** (FR), EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this proposed rule. If EPA receives relevant adverse comments, EPA will publish a timely withdrawal informing the public that the final rule will not take effect, and all relevant public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 4, 1999.

ADDRESSES: Written comments should be addressed to Ms. Jole C. Luehrs, Chief, Air Permits Section (6PD-R), at the EPA Region 6 office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, H. B. Garlock Building, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Tommy S. Stogner, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–8510.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Rule which is published in the Rules and Regulations section of this FR.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 8, 1998.

William N. Rhea,

Acting Regional Administrator, Region 6.

[FR Doc. 99–20 Filed 1–4–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY98–1–9808b: FRL–6199–2]

Approval and Promulgation of Air Quality Implementation Plans; Kentucky; Basic Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revision submitted on November 10, 1997, by the Commonwealth of Kentucky, through the Kentucky Natural Resources and Environmental Protection Cabinet. This revision modifies the implementation of a basic motor vehicle inspection and maintenance (I/M) program in Jefferson County, Kentucky, to require loaded mode testing of vehicles instead of the current idle testing. In the final rules section of this **Federal Register**, the EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: To be considered, comments must be received by February 4, 1999.

ADDRESSES: Written comments should be addressed to: Dale Aspy at the EPA Regional office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

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

Environmental Protection Agency, Region 4, Air Programs Branch, 61 Forsyth Street, Atlanta, Georgia 30303.

Air Pollution Control District of Jefferson County, 850 Barrett Avenue, Suite 205, Louisville, Kentucky 40204.

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 316 St. Clair Mall, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Dale Aspy, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Environmental Protection Agency, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303. The telephone number is (404) 562–9041. Reference file KY98–1–9808.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: November 5, 1998.

A. Stanley Mieburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–18 Filed 1–4–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 981231331–8331–01; I.D. 122898G]

Threatened Fish and Wildlife; Listing of the Gulf of Maine/Bay of Fundy Population of Harbor Porpoise as Threatened Under the Endangered Species Act (ESA)

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

ACTION: Proposed rule; withdrawal.

SUMMARY: NMFS has determined that listing of the Gulf of Maine/Bay of Fundy (GOM/BOF) population of harbor porpoise, *Phocoena phocoena*, as threatened under the ESA is not warranted at this time. Therefore, NMFS withdraws the January 7, 1993, proposal to list the GOM/BOF population of harbor porpoise as threatened under the ESA. Since publication of the proposal to list, additional information regarding the status of the GOM/BOF harbor porpoise population, its commercial fishery bycatch rate, and management actions implemented to reduce harbor porpoise bycatch have become available to justify reevaluation of the factors that prompted the original proposed listing.

ADDRESSES: Requests for copies of this determination or a complete list of references should be addressed to the Chief, Marine Mammal Division (PR2), Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Margot Bohan, F/PR2, NMFS, (301) 713–2322, Laurie Allen, Northeast Region, NMFS, (978) 281–9291, or Kathy Wang, Southeast Region, NMFS, (727) 570–5312.

SUPPLEMENTARY INFORMATION:

Background

Prompted by 1989 and 1990 data indicating that the rate of harbor porpoise bycatch in the gillnet fishery was large relative to the available estimates of harbor porpoise abundance in the GOM/BOF, NMFS announced its intent on February 12, 1991, to review the status of harbor porpoise in U.S. waters for possible listing as threatened or endangered under the ESA. At the time that NMFS was reviewing harbor porpoise status, the Sierra Club Legal Defense Fund, on behalf of the International Wildlife Coalition and 12 other organizations, pursuant to 16 U.S.C. 1533(b), submitted a petition to NMFS (September 18, 1991) to add the GOM/BOF harbor porpoise population to the U.S. List of Endangered and Threatened Wildlife (50 CFR part 17), as a threatened species. NMFS determined that the petition presented substantial information indicating that the petitioned action might be warranted (56 FR 65044, Dec. 13, 1991). Under section 4(b)(3)(A) of the ESA, if a petition is found to present such information, a review of the status of the species concerned is mandated. To ensure a comprehensive status review, NMFS solicited information and comments specific to harbor porpoise in the GOM/BOF and adjacent waters.

On May 5–8, 1992, NMFS conducted a workshop to review the status of the GOM/BOF harbor porpoise and adjacent populations (as described in Gaskin, 1984) offshore eastern North America (NMFS, 1992). Participants at that workshop reviewed the best available scientific data on the population structure, abundance, reproductive rates, and levels of bycatch for each of the populations considered. The information reviewed during the harbor porpoise workshop and that received

during the request for information as part of the status review provided NMFS with the scientific information necessary to complete the status review and respond to the petition. NMFS concluded that the harbor porpoise in the GOM/BOF represented a population sufficiently discrete to justify management as a separate population under the ESA. The GOM/BOF population, as proposed, included all harbor porpoise whose range extended throughout waters of eastern North America from (and including) the BOF, Nova Scotia, south to eastern Florida.

NMFS further concluded that the level of bycatch in the Northeast multispecies sink-gillnet fishery, as well as the known, but not quantified, level of bycatch outside the GOM including the Canadian BOF multispecies gillnet fishery, and the coastal southern New England/Mid-Atlantic gillnet fisheries were a threat to the GOM/BOF harbor porpoise throughout all or a significant portion of its range. The bycatch-to-abundance ratio indicated that the estimated bycatch by these fisheries needed to be reduced by more than 50 percent to be sustained by the present GOM/BOF harbor porpoise population. The regulatory measures in place at the time were considered inadequate to reduce this bycatch. As a result, NMFS proposed, in accordance with section 4(b)(3)(B) of the ESA, to list the GOM/BOF population of harbor porpoise as threatened under the ESA and provided for a 90-day comment period (58 FR 3108, January 7, 1993).

Following publication of the proposed rule, NMFS received several comments requesting that public hearings be held throughout New England. In response to these requests, NMFS extended the comment period on the proposed rule until August 7, 1993 (58 FR 17569, April 5, 1993).

During the extended comment period, NMFS completed analyses of data from the 1992 harbor porpoise abundance surveys to estimate abundance and analyses of the 1992 observer data used to estimate total bycatch in the Northeast multispecies sink-gillnet fishery. These analyses were presented and discussed at a meeting of the NEFMC Groundfish Committee, Harbor Porpoise Subgroup, on June 16, 1993. The information presented indicated a decline in the bycatch between 1990 and 1992 and an increased abundance estimate in 1992 over 1991. Following this meeting (in a letter dated August 7, 1994), NEFMC requested a 6-month extension of the final decision-making period on the proposal to list harbor porpoise. An extension was appropriate because, according to NEFMC and others present at the June 16 meeting, the data presented by NMFS suggested that the GOM/BOF harbor porpoise population was not distinct and, thus, was not a species under the ESA.

Under section 4 of the ESA, if there is a substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, NMFS may extend, for up to 6 months, the 1-year period of determination. On November 8, 1993 (58 FR 59230), in accordance with this provision, the date for the final determination on the proposal to list was extended for 6 months to allow for further data accrual and analyses regarding the harbor porpoise stock structure. In addition, during this extension, NMFS conducted further review of the bycatch trend, analysis of the 1993 bycatch data prior to final determination, and further consideration of all data, including the abundance survey data, relevant to the final determination. NMFS reopened the comment period for an additional 30 days (to close on August 11, 1994) to allow for public comment following completion of these analyses (59 FR 36158, July 15, 1994).

The New England Harbor Porpoise Working Group (HPWG) met on July 21, 1994, to discuss the 1992 bycatch data under consideration regarding the ESA listing proposal. The HPWG, formed in 1990, was composed of fishermen, environmentalists, and scientists whose purpose was to define the extent of the harbor porpoise problem and to identify solutions to reduce the incidental take of harbor porpoise in gillnets and to minimize the impacts on the fishery. The HPWG recommended that the updated bycatch estimates should be more fully explained so that public review and comment could provide more meaningful input to NMFS prior to the final listing determination. NMFS prepared a document in August 1994 that addressed HPWG concerns. The comment period on the proposed listing was scheduled to close on August 11, 1994, which would not have allowed enough time for public review of the NMFS document regarding HPWG concerns; therefore, the comment period on the proposed rule was further extended until September 11, 1994 (59 FR 41270). Additional meetings with conservation groups resulted in a decision to wait for 1995 data prior to proceeding with a listing determination.

NMFS had not yet made a final determination when, in fiscal year 1996, Congress imposed a 1-year moratorium on listing species under the ESA. During 1997 and 1998, NMFS has kept the listing issue under review in light of new population abundance and bycatch data, ongoing Fishery Management Council and NMFS fishery management efforts to reduce harbor porpoise bycatch, and the MMPA Section 118 Take Reduction Team (TRT) process. New bycatch data, new fishery regulations, and implementation of the HPTRP provide substantial new information to be considered in making the final listing determination. For a fuller discussion of the new data and management implementations, see the section below entitled ''Summary of ESA Factors Affecting the Species''.

Summary of Comments and Responses

Several significant comment period extensions and reopenings have occurred since publication of the original proposal to list GOM/BOF harbor porpoise. Recently, due to the passage of time, the availability of new/additional information and the desire to review the best scientific information available during the decision-making process, a document was published (63 FR 56596, October 22, 1998) in the **Federal Register** to reopen the comment period on the proposed listing of the GOM/BOF population of harbor porpoise for 30 days. This document summarized information that has become available since publication of the proposed rule to supplement our understanding of the species' status and factors affecting the species. The following comments and responses address existing concerns regarding the proposed listing of GOM/BOF porpoise under the ESA.

Comment on Definition of Distinct Population or ''Species''

Comment 1: To consider harbor porpoise in the GOM/BOF for ESA listing, that group of animals needs to qualify as a distinct population or ''species'' under the ESA. Until recently, questions remained as to whether harbor porpoise in the GOM/BOF qualify for protection under the ESA's definition of ''species.''

Response: On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (USFWS) published a policy to clarify their interpretation of the phrase ''distinct population segment of any species of vertebrate fish or wildlife'' for the purposes of listing, delisting, and reclassifying species under the ESA (61 FR 4722).

The policy outlines three elements to be considered in deciding the status of a possible distinct population segment as endangered or threatened under the ESA: (1) Discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the

significance of the population segment to the species to which it belongs; (3) the population segment's conservation status in relation to ESA standards for listing (i.e., is the population segment, when treated as if it were a species, endangered or threatened?).

Discreteness. A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (a) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (b) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

The former criterion is particularly relevant for GOM/BOF harbor porpoise. Seasonal movements into the northern GOM/BOF during summer, the known summer reproductive periodicity and spatial segregation from other conspecific groups, and the subsequent dispersal during late fall and winter from the GOM south to at least North Carolina strongly suggest a unified, single breeding assemblage. All lines of biological evidence (genetic, life history, organochlorine, heavy metal and movement data) strongly support a species status recognition under the ESA.

Significance. If a population segment is considered discrete under one or more of the above conditions, its biological and ecological significance should then be considered. NMFS, therefore, considered available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. This consideration included, but was not limited to, the following: (a) Persistence of the discrete population segment in an ecological setting unusual or unique for this taxon; (b) evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon; (c) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; or (d) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Specifically, the GOM/BOF population of harbor porpoise is an important upper trophic level predator in the GOM and there is a significant genetic difference between the GOM/BOF population of harbor porpoises and the Gulf of St. Lawrence and Newfoundland harbor porpoises. This difference is even greater when considering only females, thus indicating that females are more site-specific to the GOM/BOF than are males (Wang et al. 1996).

Harbor porpoise that concentrate in the GOM/BOF during the reproductive season also occupy shelf water habitat of the eastern United States during other times of the year. Therefore, the viability of harbor porpoise in shelf waters of the eastern U.S. is strongly dependent on the existence of a healthy, reproductive population of harbor porpoise in the GOM/BOF.

Based on current information available to NMFS, the only supportable decision that can be reached is that the harbor porpoise that occur in the GOM and BOF do represent a distinct population segment and, therefore, a species under section 3(15) of the ESA.

Status. If a population segment is discrete and significant (i.e., it is a distinct population segment), its evaluation for an endangered or threatened status will be primarily based on a review of the factors enumerated in ESA section 4(a) after taking into account conservation efforts implemented pursuant to section 4(b)(1)(A). In the next several sections of this document, the conservation status of GOM/BOF harbor porpoise is evaluated and discussed within these contexts.

Comments on the Need for the ESA Threatened Listing

Comment 2: Several commenters support a final determination to list the GOM/BOF harbor porpoise as threatened under the ESA. According to these commenters, the factors that formed the basis for the proposed listing still exist, and the current mortality rate is not sustainable.

Response: NMFS has implemented appropriate conservation strategies that are expected to reduce bycatch to the extent that an ESA listing is unnecessary. NMFS recognizes that the fishery bycatch rate has not yet been reduced to a sustainable level. However, it appears that bycatch levels are on a downward trend due to bycatch reduction measures currently in place as a result of state, Federal and Canadian fishery management. In particular, the HPTRP is in place and is expected to reduce bycatch below the potential biological removal (PBR) level for harbor porpoise. Based on available data, the current times and areas of protective coverage are broad-based and demonstrate that the HPTRP can expect to reach its goal without placing additional burdens on the fishery.

Comment 3: Several commenters are opposed to a determination to list at this time, in light of NMFS' intent to implement an HPTRP to take effect in December 1998.

Response: NMFS agrees that an ESA listing at this time is not warranted. Federal legislative and regulatory actions have been taken in the U.S. to protect the GOM/BOF harbor porpoise. NMFS expects that the recently implemented HPTRP will provide the measures and mechanisms necessary to assure that harbor porpoises do not become threatened as a result of fishing practices. Also, Canada has begun to address the need for bycatch mitigation in the Canadian BOF.

Comment 4: One commenter proposed that listing harbor porpoise as a threatened species in North Carolina waters is not necessary for the protection of this species. Although a small number of harbor porpoise, five to be exact, were taken during observer trips off North Carolina, the commenter explained that these porpoises were taken by large mesh monkfish gillnets or dogfish gillnets, which will be eliminated from North Carolina waters in the near future as a result of fishery management plan restrictions and stock rebuilding measures. Furthermore, observer data indicate, at most, a remote likelihood that the state's traditional small net gillnet fishery would cause incidental mortality or serious injury.
Response: NMFS has determined that an ESA threatened listing is not warranted at this time.

Comments on Bycatch Reduction Measures

The final rule that implements the HPTRP (63 FR 66464, December 2, 1998) contains a number of comments/responses on bycatch reduction measures.

Comment 5: Several commenters claimed that NMFS has failed to take necessary actions under the MMPA or ESA to protect the GOM/BOF harbor porpoise. Another commenter supported and urged NMFS to follow through with the adoption of a bycatch reduction program that incorporates reasonable management measures (such as time and area closures), with assistance directed to the gillnet fishery for gear mitigation research and field experiments.

Response: The final rule implementing the HPTRP (63 FR 66464, December 2, 1998), as well as the notice reopening the comment period regarding this listing determination (63

FR 56596, October 22, 1998), address management actions that were implemented and are currently in place to reduce bycatch. NMFS believes that the actions will effectively reduce the threats to the species to prevent a need for listing. A specific discussion of the Gulf of Maine and Mid-Atlantic Take Reduction Teams' progress and negotiations toward this objective is contained in the HPTRP Environmental Assessment and Final Regulatory Flexibility Act analysis (HPTRP/EA/FRFA) and the final rule (63 FR 66464, December 2, 1998) implementing the HPTRP.

Comment 6: Several other commenters raised concerns regarding the MMPA as a mechanism for further reducing the incidental kill of harbor porpoise. They explained that there is little assurance that the reauthorized MMPA would be successful in providing protection, especially if the GOM/BOF harbor porpoise were not listed under the ESA. They also claimed that the proposed HPTRP relies on an overly optimistic pinger effectiveness rate of 80 percent and that it does not contain sufficient closures and pinger requirements to achieve PBR. The term PBR is defined as ''the maximum number of animals not including natural mortalities, that may be annually removed from a marine mammal stock without compromising the ability of the stock to reach or maintain its optimum population level. The commenters further stated that, although the MMPA provides a timetable and process by which the kill of marine mammals should be reduced to an insignificant level that approaches zero, this process is not yet in place and may or may not result in meaningful reduction in kill rates.

Response: Section 118(f) of the MMPA authorizes NMFS to develop take reduction plans designed to assist in the recovery or to prevent the depletion of each strategic stock which interacts with a commercial fishery. The immediate goal of a take reduction plan is to reduce the incidental mortality or serious injury of that species incidentally taken in the course of commercial fishing operations to levels less than the PBR level established for that species under MMPA section 117. The long-term goal of the take reduction plan is to reduce the level of mortality and serious injury of strategic stocks incidentally taken in the course of commercial fishing operations to a level approaching a zero mortality rate. NMFS expects the HPTRP to reduce fishery takes of harbor porpoise to below PBR within the next 6 months, thus preventing a need to list.

The overall HPTRP strategy for the GOM is a series of short, discrete, and complete closures in combination with much larger time/area closures where pinger use is required. Pingers have been proven to be effective in reducing harbor porpoise takes in gillnets; however NMFS recognizes that pingers are not 100 percent effective. Thus, the strategy for the overall HPTRP remains a combination of complete closures and pinger use. This combination is expected to reduce bycatch in those areas of high harbor porpoise bycatch through complete closures while requiring pinger use outside closure times and areas to compensate for the interannual variability of both harbor porpoise and fishing effort that may shift bycatch outside the discrete closure areas. NMFS expects these strategies to achieve adequate results without the need for additional closures.

The HPTRP is based on an overall bycatch reduction scenario that is intended to spread the bycatch reduction effort throughout the fishery where bycatch occurs; this means that a bycatch reduction measure is in place during the time period in which effort shifts might occur. It relies on each of its components working together collectively to reach MMPA PBR goals. NMFS will review harbor porpoise bycatch rates to ensure that the pinger effectiveness rate is being realized.

Comment 7: A commenter recommended that NMFS review the impacts of the HPTRP immediately following the first year of plan implementation to determine if consideration of an ESA listing is still warranted.

Response: NMFS intends to reevaluate the effectiveness of the HPTRP management measures and the effectiveness of the MMPA to achieve harbor porpoise conservation in 1999. If bycatch goals are not achieved, more restrictive measures to reduce bycatch may be warranted. NMFS and the TRTs will need to identify other measures that may reduce bycatch to MMPA-required levels.

Comment 8: Several commenters expressed concern that further restrictions on fishermen as a result of listing would be a significant, unnecessary hardship.

Response: NMFS has determined not to list GOM/BOF harbor porpoise under the ESA; therefore, no hardship would result.

Comment 9: The commenter stated that the current management provisions should be tested.

Response: NMFS intends to continually review harbor porpoise bycatch to determine whether the time-area closures and pinger requirements are effective at reducing the bycatch to the specified levels within the designated time frame. The MMPA requires TRP evaluation at 6-month intervals and modifications as necessary.

Comment 10: Several comments referred to the fact that the ESA listing determination needs to take into account the bycatch in Canada as well as the bycatch in U.S. fisheries. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) gives the Secretary of Commerce authority to place pressure on foreign governments who fail to take adequate steps to protect and preserve marine resources. Rather than simply focus on the U.S. fleet, the commenter suggested that pressure should be brought to bear on Canada to reduce their bycatch.

Response: NMFS agrees with the commenter that bycatch must be reduced throughout the range of this population. NMFS, therefore, is working with DFO-Canada, and other appropriate state and Federal agencies to develop protective measures that will result in a reduction of bycatch of the GOM/BOF harbor porpoise throughout their range. These programs are described in ''Summary of Factors Affecting the Species, D. The Inadequacy of Existing Regulatory Mechanisms''.

Relative to the GOM and BOF, NMFS and DFO-Canada further recognize that this issue, being transboundary, requires the cooperative efforts of both agencies if the situation is to be resolved. Toward that end, both agencies acknowledge that management and legal requirements differ in each country; however, both agencies are committed to the reduction of the incidental take of porpoise in their respective fisheries.

Furthermore, NMFS has met with representatives of the Canadian Government to discuss the HPTRP in U.S. waters and to encourage Canada to participate in reducing the overall fishing mortality on this stock. DFO-Canada developed its Harbor Porpoise Conservation Plan and has implemented an observer program that has documented a continuous reduction in bycatch in their BOF gillnet fisheries.

Species Status and Factors Affecting the Species

This final determination gives consideration to new geographic range data, population abundance and bycatch data, NEFMC/NMFS' ongoing fishery management efforts to reduce harbor porpoise bycatch, and the progress in

mortality reduction under the MMPA. Since publication of the proposed rule and as indicated in the notice reopening the comment period on the proposed rule, the following information has become available to supplement our understanding of the species' status and factors affecting the species.

Stock Structure (Discreteness)

Recent analyses involving mitochondrial DNA (Wang, 1996), organochlorine contaminants (Westgate, 1997), heavy metals (Johnston, 1995), and life-history parameters (Read and Hohn, 1995) support the currently accepted hypothesis of four separate distinct populations in the western North Atlantic: the Gulf of Maine/Bay of Fundy, Gulf of St. Lawrence, Newfoundland, and Greenland populations (See response to Comment 1).

Abundance

Three abundance surveys were conducted during the summers of 1991, 1992, and 1995. The population estimates were 37,500 in 1991, 67,500 in 1992, and 74,000 in 1995. Refer to Palka (1995a and 1996) for detailed information.

Summary of ESA Factors Affecting the Species

Species may be determined to be threatened or endangered due to one or more of five factors described in section 4(a)(1) of the ESA. These factors are discussed here, as they apply to the GOM/BOF harbor porpoise, in light of additional/new information that has become available since the species was originally proposed for listing.

A. The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

The shoreline bordering the nearshore habitat of this species along the eastern U.S. coastline is developed in many areas and is potentially threatened with further physical modification. There is no new or additional evidence to indicate that such modification or destruction has contributed to a decline of this population or that the range of this species has changed significantly as a result of habitat loss. In addition, habitat modification does not appear to have contributed to a decline of this population. This factor was not a basis for the proposed listing.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

One of the principal factors for proposing to list the GOM/BOF population of harbor porpoise as threatened under the ESA was the level of harbor porpoise bycatch in commercial fisheries in the GOM/Bay of Fundy/Mid-Atlantic. GOM/BOF harbor porpoise takes have been documented in the Northeast multispecies sink gillnet, Mid-Atlantic coastal gillnet, and Atlantic pelagic drift gillnet fisheries, and in the Canadian Bay of Fundy sink gillnet fishery and herring weir fishery. The average annual mortality estimate from 1992 to 1997 for the above U.S. fisheries is 1,749 harbor porpoise. Refer to the U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessment Report (Waring, *et al.*, 1997) and the notice reopening the comment period (63 FR 56596, October 22, 1998) for detailed fishery bycatch information. Additionally, the HPTRP EA provides detailed bycatch information for the Gulf of Maine sink gillnet and Mid-Atlantic coastal gillnet fisheries.

C. Disease or Predation

There is no indication that disease has had a measurable impact on GOM/BOF harbor porpoise. Likewise, there is no new evidence, since the proposed listing, to indicate that predation has contributed to the decline of GOM/BOF porpoise. This particular factor was not a basis for the proposed listing.

D. The Inadequacy of Existing Regulatory Mechanisms

This factor and Factor B formed the basis for the proposed listing. As discussed in the notice reopening the comment period (63 FR 56596, October 22, 1998), following are the regulatory mechanisms that have gone into effect since publication of the proposed rule.

NMFS/NEFMC Bycatch Reduction Measures: In 1994, as part of Amendment 5 to the NE Multispecies FMP, the NEFMC proposed, under authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), a 4-year program to reduce the harbor porpoise bycatch off New England to 2 percent of the estimated harbor porpoise population size per year by phasing-in time and area closures to sink gillnet gear. NMFS adopted and implemented NEFMC's first year closure recommendations on May 25, 1994 (59 FR 26972). Harbor porpoise bycatch rates increased in 1994 despite the new time-area gillnet fishing closures enacted by NMFS on May 25, 1994, therefore, NMFS expanded both the time and area of the fall closure around an area of high bycatch called Jeffreys ledge (60 FR 57207).

In November 1995, NMFS implemented Framework Adjustment 14 (60 FR 55207) which enlarged and redefined the Mid-Coast Closure Area in both time and area during 1995 in an effort to achieve the necessary reductions in harbor porpoise bycatch. The Mid-Coast closure was closed to fishing with sink gillnets from March 25 through April 25. Framework Adjustment 14 also required closure of an area in southern New England, south of Cape Cod, from March 1 to 30.

Amendment 7 to the NE Multispecies FMP, implemented in July 1996, implemented marine mammal gillnet closures as part of an overall groundfish effort reduction program. In addition, the NEFMC recommended the use of pingers (based on results of the 1994 experiment) in several experimental fisheries to evaluate their use as bycatch reduction tools.

Framework 25 to the NE Multispecies FMP (63 FR 15326, March 31, 1998), was implemented on May 1, 1998. Framework 25 implemented gillnet fishing closures throughout the GOM to conserve cod (*Gadus morhua*). However, these closures are expected to have bycatch reduction benefits to harbor porpoise as well.

Coastal Atlantic States Bycatch Reduction Efforts: In the fall of 1994, NMFS met with the Atlantic States Marine Fisheries Commission's (ASMFC), Management and Science Committee, to discuss ways that the ASMFC could address marine mammal bycatch in its interstate fishery management plans. Since November 1995, the ASMFC has amended its Interstate Fishery Management Program charter so that protected species/fishery interactions are addressed in the ASMFC's fisheries management planning process. This means that each state fishery management plan will contain a section that describes protected species issues relevant to the fishery in question. Additionally, NMFS and USFWS representatives with protected species expertise have been incorporated into the ASMFC's species technical committees, and plan development and review teams.

The ASMFC is in the final stages of developing the Atlantic Coastal Cooperative Statistics Program. This program will coordinate a wide range of fisheries data and information, including protected species bycatch data, from all Atlantic coastal states. This data management system will improve the ability of NMFS and other regulatory agencies in identifying the most effective management measures to address protected species bycatch in state and Federal waters.

Harbor Porpoise Take Reduction Teams and Plan: For detailed information on the Gulf of Maine and

Mid-Atlantic Take Reduction Teams and the development of the HPTRP, see ADDRESSES.

On December 2, 1998, (63 FR 66464) NMFS issued a final rule to implement a HPTRP in the Gulf of Maine and Mid-Atlantic waters. The HPTRP and final rule include a range of management measures to reduce the bycatch and mortality of harbor porpoise. In the GOM, the HPTRP includes time and area closures and time/area periods during which pinger use would be required in the Northeast, Mid-coast, Massachusetts Bay, Cape Cod South, and Offshore Closure Areas. In the Mid-Atlantic area, the HPTRP includes time/area closures and modifications to gear characteristics, including floatline length, twine size, tie downs, and number of nets, in the large mesh and small mesh fisheries. NMFS expects that the HPTRP and implementing final rule will reduce bycatch to below the designated PBR level within 6 months of implementation.

Canadian Mitigation Measures: In the mid-1990s, several Canadian initiatives, including fishery effort reduction, required pinger use, expanded observer coverage, and fisher education programs, resulted in a significant reduction of harbor porpoise bycatch in the BOF. On October 7, 1994, NMFS received a Harbor Porpoise Conservation Plan for the BOF, drafted by DFO-Canada, for comment. Following responses to comments, the HPCP was incorporated into DFO-Canada's long-term management of fisheries to reduce harbor porpoise entanglements. In 1995, DFO-Canada published the ''Harbor Porpoise Conservation Strategy for the Bay of Fundy.'' The strategy combines effort reduction, required pinger use, expanded observer coverage, and fisher education program to reduce bycatch. Since implementation of their conservation strategy, Canadian fishery bycatch has been reduced progressively to approximately 20 to 50 harbor porpoise per year.

Regarding harbor porpoise that have been trapped each summer in herring weirs in the western BOF and along southwestern Nova Scotia (Smith, Read, and Gaskin, 1983), the DFO-Canada is now requiring that a grate be placed over the entrance to the weir in order to stop anything larger than herring (i.e., marine mammals, basking sharks, etc.) from entering through the entrance of the weir.

E. Other Natural or Manmade Factors Affecting its Continued

Existence

Other potential human-induced factors that may be affecting this harbor porpoise population include high levels of contaminants in their tissues. Concentrations of organochlorine contaminants from 110 GOM/BOF harbor porpoise were recently measured (Westgate, 1995). Polychlorinated biphenyl (PCB) levels, the most prominent contaminant, and dichloro-diphenyl trichloroethane (DDT) levels were both higher in the GOM/BOF harbor porpoise than in the Gulf of St. Lawrence and Newfoundland harbor porpoise, although they are now much lower they were 10 years ago, as reported in Gaskin *et al.* (1983). Trace metal contaminants were also measured, and it was found that mean concentrations of copper, zinc, and mercury were similar to values previously reported for harbor porpoise in other regions of the world (Johnston, 1995). No obvious pathology has been noted in more than 300 necropsies of harbor porpoise incidentally captured in gillnets in the Bay of Fundy (A.J. Read, unpublished data). Although it is not known whether these contaminants have other effects, the presence of these contaminants in harbor porpoise tissues does not appear to pose a serious threat to this population.

Final Determination

Section 4(b)(1) of the ESA requires the Secretary to make final listing determinations solely on the basis of the best scientific and commercial data available and after taking into account state and Federal efforts being made to protect the species. Therefore, in making this listing determination, NMFS has assessed the status of the species, identified factors that have led to the decline of the species, and evaluated available

conservation measures to determine whether such measures ameliorate risks to the species.

The most significant factor that NMFS considered in this decision is the existing mechanisms to reduce the level of bycatch which was published after the proposal to list. NMFS evaluated the likelihood that the bycatch reduction programs implemented in Canada and at the state and Federal levels would affect the GOM/BOF harbor porpoise population in the future.

NMFS believes these conservation efforts will help the sustainability of the GOM/BOF population of harbor porpoise based on the following: (1) Strong commitments have been made to carry out these programs; (2) the parties with the authority to implement the bycatch reduction efforts have followed appropriate procedures and formalized the necessary documentation and; (3) objectives and time frames for achieving these objectives have been established and include adaptive management principles. NMFS believes that the bycatch reduction programs currently in place will effectively address the factors causing the decline of the GOM/BOF harbor porpoise population and increase the population's sustainability.

To directly examine the potential risk of extinction of GOM/BOF harbor porpoise, a population viability analysis (PVA) was recently prepared (Wade Draft Report to NMFS). A PVA is used to estimate future trends of a population to estimate the probability of extinction of the population given certain assumptions. Using 1991, 1992, and 1995 abundance data and 1992 through 1996 bycatch data, stochastic population dynamics models of the GOM/BOF harbor porpoise population were developed to evaluate the probability of persistence of the population over the foreseeable future (the next 20 to 100 years). Each of the models predicted a very high probability of extinction within 100 years under the current levels of mortality/bycatch, whereas the probability of extinction within 20 years was estimated to be low. Reducing the current mortality/bycatch level by one-half would decrease, but not eliminate, the probability of extinction in 100 years; but it was estimated to eliminate any probability of extinction within 20 years. Finally, reducing the current mortality/bycatch to one-quarter of the current level was estimated to make the risk of extinction within 100 years unlikely.

HPTRP implementation is expected to reduce the current fishery mortality/bycatch level to below PBR within the next 6 months. Hence, based on this PVA and successful reduction of bycatch through HPTRP implementation, NMFS anticipates the elimination of any probability of extinction within the next 100 years.

The current measures enable NMFS to achieve reduction of harbor porpoise bycatch to sustainable levels, while minimizing the overall impact to affected fisheries. In view of the currently decreasing levels of bycatch in Canadian fisheries and the regulatory mechanisms now being implemented under the MMPA, NMFS concludes that listing the GOM/BOF population of harbor porpoise as threatened under the ESA is not warranted at this time.

NMFS and the appropriate agencies will continue to monitor the bycatch levels and adjust the bycatch reduction programs as necessary to promote reduced bycatch. NMFS will consider

any new regulations that may affect harbor porpoise or the implementation of the HPTRP and evaluate whether management measures need to be changed at that time. NMFS intends to reconvene the TRTs semiannually during the first year of plan implementation in order to track the HPTRP's progress toward the 6-month MMPA PBR goal.

This action is exempt from review under E.O. 12866.

Dated December 30, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries,National Marine Fisheries Service.

[FR Doc. 99–138 Filed 1–4–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 122498C]

RIN 0648–AL31

Fisheries of the Northeastern United States; Amendment 9 to the Northeast Multispecies Fishery Management Plan (FMP) Amendments to Address the Sustainable Fisheries Act Requirements and Other Measures

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council has submitted Amendment 9 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) for Secretarial review and is requesting comments from the public. Amendment 9 addresses new Sustainable Fisheries Act requirements for NE multispecies, among other measures.

DATES: Comments must be received on or before March 8, 1999.

ADDRESSES: Comments on this proposed rule should be sent to Jon C. Rittgers, Acting Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Proposed Rule for Amendment 9 to the NE Multispecies FMP.''

Copies of Amendment 9, the regulatory impact review, and the environmental assessment are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 978–281–9252.

SUPPLEMENTARY INFORMATION: If approved, Amendment 9 would: (1) Include Atlantic halibut in the NE Multispecies FMP; (2) Establish new or revised overfishing definitions for cod, haddock, pollock, redfish, white hake, yellowtail flounder, windowpane flounder, winter flounder, American plaice, witch flounder, Atlantic halibut, and ocean pout; (3) revise specifications of optimum yield; (4) add a framework process to allow for aquaculture projects and modifications to the overfishing definitions; (5) postpone the Vessel Monitoring System beyond May 1999; (6) prohibit brush-sweep trawl gear when fishing for multispecies; (7) increase the winter flounder minimum fish size to 13 inches; and (8) implement a one-fish halibut possession limit of 36 inches or greater.

A proposed rule that would implement Amendment 9 may be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the procedures of the Magnuson-Stevens Fisheries Conservation and Management Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 9 in order to be considered in the approval/disapproval decision on the FMP amendment. All comments received by March 8, 1999, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the FMP amendment.

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

Dated: December 29, 1998.

Gary C. Matlock,

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

[FR Doc. 98–34833 Filed 12–30–98; 3:06 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 2

Tuesday, January 5, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–122–1]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

PLACE, DATE, AND TIME OF MEETING: The meeting will be held at the World Congress Center, 285 International Boulevard NW, Atlanta, Georgia; (404) 223–4500. The meeting will be held on January 20, 1999, from 2:30 p.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, NPIP, VS, APHIS, 1498 Klondike Road, Suite 200, Conyers, GA 30094–5104, (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health.

Tentative topics for discussion at the upcoming meeting include:

1. Proposed changes to the provisions of the NPIP.

2. Poultry export issues.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the discussions during the meeting. Written statements on meeting topics may be filed with the Committee before or after the meeting by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT.** Written statements may also be filed at the meeting. Please refer to Docket No. 98–122–1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 29th day of December 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–113 Filed 1–4–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collections; Comments Request—(1) Food Stamp Application, Verification and Certification Activities, and (2) State Agency Options

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of proposed information collections. The information collection requirements described in this notice are limited to those which are necessary to carry out the application, verification, and certification of food stamp applicants and recipients.

DATES: Comments must be received on or before March 8, 1999 to be assured of consideration.

ADDRESSES: 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 has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send comments and request for copies of this information collection to Margaret Werts Batko, Assistant Branch Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, (703) 305–2516. Comments may also be faxed to the attention of Ms. Batko at (703) 305–2486. The internet address is: Margaret__Batko@FCS.USDA.GOV. All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Ms. Batko, (703) 305–2516.

SUPPLEMENTARY INFORMATION: The information collection requirements described in this notice are limited to those which are necessary to carry out Sections 3, 5, 6, 11 and 13 of the Food Stamp Act of 1977, and Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, enacted August 26, 1996, as amended (PRWORA). PRWORA contained numerous amendments to the Food Stamp Act of 1977 (hereinafter referred to as ''the Act''). PRWORA contained several provisions designed to increase State agency flexibility in administering the Food Stamp Program—especially in the area of household application and certification for program benefits. PRWORA changed the eligibility requirement for aliens without changing the Food Stamp Act. PRWORA limited the eligibility of most able-bodied adults without children to three months in a three-year period, required that some individuals be sanctioned, and allowed some State agency options. State agencies were notified in an agency memorandum that they were required to implement the mandatory provisions of PRWORA upon enactment for applicant households and at recertification for participant households without waiting for formal regulations. The alien provisions in PRWORA were subsequently amended by Public Law 104–208, the Omnibus Consolidated Appropriations Act, dated September 30, 1996; Public Law 105–33, the Balanced Budget Act, dated August 5,

1997; and Public Law 105–185, the Agricultural Research, Extension, and Education Reform Act of 1988, dated June 23, 1998.

This notice contains two separate information requests and takes the statutory changes discussed in the preceding paragraph into account. The first information request is related to the collection and processing of information provided by households. The second one is related to State agency options.

Request 1

Title: Application and Certification of Food Stamp Households.

OMB Number: 0584–0064.

Form Numbers: None.

Expiration Date: (Three years from 10/31/00.)

Type of Request: Update of a currently approved information collection and request for approval of new collections.

Abstract: Title 7, Part 273 of the Code of Federal Regulations (CFR) sets forth the Food Stamp Program requirements for the application, certification, and continued eligibility for food stamp benefits. This rulemaking updates the collection burden and takes into account changes required by PRWORA, as amended, in these areas. A majority of the information collection or record keeping requirements contained in this notice are currently approved by OMB under OMB Number 0584–0064. Proper notice and public comment were obtained prior to OMB approval (see notice published in **Federal Register** of February 5, 1997, 62 FR 5380). No comments were received. At the time the February 5 notice was issued, proposed rules to implement the changes in these areas were still in the development stage and some information collection or record keeping requirements had not yet been identified. The proposed rules are still in the Departmental clearance process, but we have reevaluated and revised the time required to take actions considering implementation of the new provisions and automation in most State agencies.

Revisions to Current Burden Estimates Under OMB No. 0584–0064

In the February 5 notice, the new requirements for sponsored aliens were included as a separate category. Since this is an integral part of the application process, we have included them and the additional alien eligibility and verification requirements in this rule in the burden associated with processing initial applications. We separated applications for initial application and recertification for both household and State agency burden. We included burden previously associated with application worksheets in the State agency's burden associated with applications for initial certification and recertification. We included the burden associated with giving an explanation of monthly reporting and retrospective budgeting to households in the State agency's burden for application processing because the household must be given the explanation at the time of certification and recertification. We separated State agency burden associated with processing reports and changes during the certification period into a separate category. We believe this will enable us to more accurately estimate burden associated with these tasks.

In making the new burden estimates, we factored in savings due to State agency computerized systems. We do not have reliable data on which to base our estimates, and we believe that the collection of such data would be counterproductive. However, we would welcome any data State agencies would like to submit for our future consideration.

Burden associated with the items—Demand Letter for Overissuance, Advance Notice of Administrative Disqualification Hearing, and Action Taken on Administrative Disqualification Hearing, 7 CFR 273.17 and 7 CFR 273.18, are being transferred out of OMB NO. 0584–0064. We plan to transfer the items to another existing OMB approval number or submit the items to OMB for a separate approval number. This move is for administrative management purposes because these forms are handled by a separate division within the agency.

Burden hours associated with information collection, reporting, and recordkeeping as it relates to household application, certification, and continued eligibility are described below and are assessed by using one of two specific base figures. Burden associated with initial applicant households is based on the number of initial applications expected to be received (7,400,000, as reported by State agencies on form FNS–366B). Burden associated with participating households such as recertification applicants and reporting of changes in household circumstances is based on the estimated number of participating households (10,900,000 as reported by State agencies on form FNS–388). Using these two base figures, the methodologies used and estimated burden hours are as follows:

7 CFR 273.2 Initial Food Stamp Application

Household burden: Households must complete an application in order to obtain benefits. Section 11(e)(2) of the Act (7 U.S.C. 2020(e)(2)) provides that the State agency shall develop an application containing the information necessary to comply with the Act. The Act requires an adult representative to sign a statement, under penalty of perjury, that the information provided on the application is true and correct to the best of his/her knowledge, including information regarding the citizenship or alien status of each member. Prior to PRWORA, State agencies had to use a federally-designed application unless FNS approved a State-designed deviation. The FNS-designed model application sought information used to comply with the eligibility requirements of Sections 5, 6, and 11 of the Act. Certain notices were required to be provided on or with the State-designed applications to ensure compliance other Federal laws governing nondiscrimination, civil rights, privacy, and computer matching. All States were operating with the FNS-designed model application or an FNS-approved deviation when PRWORA was enacted.

Section 835 of PRWORA amended Section 11(e) of the Act to eliminate some mandatory form content requirements and to allow State agencies to design their own application forms.

Many State agencies have automated the application and application processing requirements and some have on-line application systems. In recognition of this, PRWORA provides that nothing in the Act shall prohibit the use of signatures provided and maintained electronically, storage of records using automated retrieval systems only, or any other feature of a State agency's application system that does not rely exclusively on the collection and retention of paper applications or other records.

Section 11(e)(4) of the Act and 7 CFR 273.14 of the current regulations require State agencies to send the household a notice of expiration when its certification period is going to expire and require households to submit a new application in order to renew its eligibility. These requirements were not changed by PRWORA. Section 3(c) of the Act, as amended by section 801 of PRWORA, allows longer certification periods than were previously allowed. PRWORA allows State agencies to assign certification periods up to 12 months except that certification periods may be up to 24 months if all adult

members are elderly or disabled. A State agency shall have at least one contact with each certified household every 12 months.

This information collection request takes into account additional burdens imposed pursuant to PRWORA. These allow State agencies to sanction food stamp households who are receiving grants under a State's Temporary Assistance for Needy Families program if minor children are not attending school, or if the adults do not have or are not working toward attaining a secondary school diploma or its equivalent (Section 103 of PROWRA), makes individuals convicted of drug-related felonies ineligible for food stamps (Section 115), makes fleeing felons and probation and parole violators ineligible (Section 821), allows States to disqualify individuals for failure to cooperate with child support agencies or who are in arrears in court-ordered child support payments (Sections 822 and 823), and limits the food stamp participation of most able-bodied adults without dependents to 3 months in a 3-year period (Section 824). These requirements mean that additional information has to be requested on the application.

Section 402(a)(2) of PRWORA, as amended, conditions food stamp eligibility of some aliens on factors not related to their alien status. For example, refugees and asylees are only eligible for 7 years from the date of entry or the date status was granted. Some aliens lawfully admitted for permanent residence must have earned or be credited with 40 qualifying quarters of work as determined under title II of the Social Security Act. Others have to have a military connection, be battered, belong to certain Indian tribes, or belong to certain Hmong or Highland Laotian Tribes during a certain period of time. Some aliens are only eligible if they were lawfully residing in the United States on August 22, 1996, or were age 65 or older on that date. Determining and verifying these complicated new eligibility requirements will significantly increase the information that must be obtained on the application, and the household will have to submit additional verification. Title IV of PRWORA requires the Department of Justice (DOJ) to develop regulations to be used to verify citizenship and eligible alien status. Under DOJ's August 4, 1998, proposed regulations (63 FR 41662), applicants for food stamps must provide verification of citizenship or alien status, each alien applicant 18 years of age or over must go to the food stamp office in person and present his or her immigration document, and many aliens may be required to submit an additional description identification document.

The total number of respondents is the number of initial applications expected to be received (7,400,000 less 200 alien households that will not apply = 7,399,800). Household burden to complete an initial application (assuming entries on every line) is estimated to average at least 11 minutes (.1833 hour). In some States the applications are on paper and in others they are on-line in computerized systems. In States that have multiple program applications, we are only considering the time it takes to complete the food stamp portion. Normally, verification is done through documentary evidence from a household's own records, such as birth certificates, bank statements, income tax returns, and utility bills. OMB does not require a burden assessment when collection of the information is provided from a respondent's own records, but it may take time to gather exact information from various documents such as wage stubs, immigration documents, social security number cards, and so forth. We estimate total annual household burden for initial applications to be 1,356,630 hours (7,399,800 × .1833).

State agency burden in processing initial applications: The State agency must interview the household to obtain all necessary information; explain the program; obtain required verification; and, for households determined to be eligible, explain the reporting requirements and compute the benefit level. Section 11(e)(3) of the Act requires that the State agency verify the household's eligibility and provide a clear written statement explaining what acts the household has to perform to cooperate in obtaining verification and otherwise completing the application process. As the result of PRWORA, additional information relating to the work history of able-bodied adults without dependents, the eligibility of aliens, disqualifications, and fleeing felon status must now be determined and verified.

At one time FNS designed a worksheet format to provide State agencies a place to document additional information provided or clarified by households during the interview; the type of verification provided by the household; and computations of ineligibility or eligibility and benefit levels. FNS does not have authority to approve State forms, and many States have automated the eligibility determination process. In some States the workers complete on-line applications with households during the interview. The system stores, interprets, and processes the information to determine if the household is eligible and, if eligible, the correct benefit level. FNS will no longer be making a worksheet format available to State agencies. State agencies may develop a paper worksheet if they want one.

In estimating the burden, we considered the changes in the eligibility criteria and the simplified procedures pursuant to PRWORA, reductions due to computerized systems which vary from State to State, and increases due to including the explanation for monthly reporting. Some applications may be denied for obvious reasons such as excess resources or income in a short period of time while other applications may take an extremely long time to process if the household contains aliens or has self-employment income. We estimate that on average a minimum of 15 minutes or .25 hours is required to perform an initial certification. We estimate total annual burden to be 1,849,950 hours (7,399,800 × .25).

7 CFR 273.14(b) Food Stamp Application for Recertification

Household burden: The number of households expected to file an application for recertification is based on the number of current participants (10,900,000 less 228,000 ineligible aliens = 10,672,000). Elderly and disabled households may now be certified for up to 24 months and other households may be certified for up to 12 months. A few State agencies assign three-month certification periods to prevent quality control errors. Our burden assessment assumes on average participating households will submit one application for recertification each year. We estimate that most States will choose to simplify the recertification form since FNS approval is no longer required and that the burden time will be reduced as households become familiar with the form. We estimate burden time for completing and submitting a recertification application to be 8 minutes (.1333 hour). We estimate total annual burden for recertification applications to be 1,422,933 hours (10,672,000 × .1333).

State agency burden in processing applications for recertification: We are assuming that the recertification process will be performed on all applications for recertification (10,672,000). We expect State agencies to streamline the recertification process, and previously verified information does not have to be reverified. We estimate it will take an average of 11 minutes or .1833 hours to process an application for

recertification. We estimate total annual burden to be 1,956,533 hours (10,672,000 × .1833).

7 CFR 273.10(g) Notices of Eligibility, Denial, or Pending Status

State agency burden: Each household that submits an initial application or a reapplication must receive a notice of eligibility, notice of denial notice, or notice of pending status awaiting additional information. Estimates are based on the number of applications for initial certification and recertification expected to be received (18,071,800). There will be a decrease in the number of responses because of a decrease in the number of households that apply and the fact that longer certification periods will likely be assigned. Based on the fact that most State agencies have computerized notices, we estimate that it will take 2 minutes or .0333 hours to input data and initiate the notice. We estimate total annual burden to be 602,393 hours (18,071,800 × .0333).

7 CFR 273.21 Monthly Reports

Household burden: State agencies have the option to require certain households to report information about household circumstances, changed or unchanged, on a monthly basis. State agencies determine what information is to be reported and how. The content of each State agency's report is not readily available from which to estimate burden time per response. When monthly reporting was a Federal mandate, about 32% of the caseload was submitting monthly reports. When monthly reporting became optional, we previously estimated that 16% of the caseload would still be subject to monthly reporting. A few State agencies have since eliminated monthly reporting for households on Indian reservations when the Act was changed to impose restrictions on reporting, and some State agencies have reduced the number of monthly reporting households for their own administrative reasons over the past several years. Based on this, we estimate a further reduction to 15% of the caseload. We estimate that 1,600,800 participating households (10,672,000 × .15 = 1,600,800) will be subject to monthly reporting and total annual responses would be 19,209,600 (1,600,800 × 12 months). We estimate burden time for a household to complete a monthly report to be 7 minutes or .1167 hour. The monthly report is not affected by automation and households must complete and return a paper form. We estimate total annual burden to be 2,241,120 hours (19,209,600 × .1167).

7 CFR 273.12 (a) Change Report

Household burden: As stated earlier, we estimate that 15% of the caseload will be required to report monthly. The remaining 85% of the caseload (10,672,000 × .85 = 9,071,200 households) must report changes in circumstances that may affect their eligibility or benefit level within 10 days of the date the change becomes known. Data is not collected on the number of such change reporters or how often they report. Previous estimates assumed that 75% of those subject to change reporting would actually report, 25% of those households would report at least once a year, and 50% would report at least twice a year. State agencies may require households not subject to monthly reporting to submit information about child support payments quarterly on a change report form that is used for reporting other changes, or State agencies may develop a separate child support report form. Under PRWORA, States may assign longer certification periods which will result in more changes being reported. Taking these factors into consideration, we estimate that each change reporting household on average will submit 1 report a year for a total of 9,071,200 responses. We estimated the time to complete a report to be 5 minutes or .08333 hours. This burden time is not affected by automation as households must complete and submit a paper form. We estimate total annual burden to be 755,933 hours (9,071,200 × .0833).

7 CFR 273.21(j)(2) Notice of Late or Incomplete Monthly Reports

State agency burden: State agencies must notify households if a monthly report is late or additional information or verification is needed. We estimate that 5% (19,209,600 × .05 = 960,480) of the monthly reports expected to be received will be late or incomplete resulting in the need to generate this notice. We estimate burden time per response to be 2 minutes or .0333 hours and total annual burden to be 32,016 hours (960,480 × .0333).

7 CFR 271.2 and 7 CFR 273.21(j)(2) Adequate Notice to Monthly Reporters

State agency burden: State agencies must send monthly reporting households a written notice if their benefits will be or have been increased, reduced, or terminated based on information contained on the monthly report. We estimate that 30% (19,209,600 × .30 = 5,762,880) of the monthly reports received will result in an increase, reduction, or termination of benefits. The remaining 70% of the monthly reports will not require a change in benefits, so no notice is necessary. We estimate burden time per response to be 2 minutes or .0333 hours and total annual burden to be 192,096 hours (5,762,880 × .0333).

7 CFR 273.13 Advance Notice of Adverse Action

State agency burden: Households that submit a change report form must receive a written notice of any action to reduce or terminate benefits in advance of the date the action will become effective. We estimate that 50% of the change reports expected to be received (9,071,200 × .50 = 4,535,600) will result in a reduction or termination of benefits which will require the State agency to generate this notice. We estimate the burden per notice to be 2 minutes or .0333 hours and total annual burden to be 151,187 hours (4,535,600 × .0333).

7 CFR 273. 14(b) Notice of Expiration

State agency burden: The State agency must send each participating household a notice when its certification period is about to expire that informs the household it must reapply to receive continued benefits. Based on a 1995 report on the Characteristics of Food Stamp Households, the average certification period of all households, including those with elderly and disabled members was 9.8 months. (The number of annual notices was underestimated in the prior request.) Under PRWORA and this proposal, State agencies may establish longer certification periods—up to12 months for most households and 24 months for households in which all adult members are elderly or disabled. Households with an elderly or disabled person represent 34% of the caseload, but all adult members in these households may not be elderly or disabled. However, based on this new authority, it is anticipated that State agencies will in general establish somewhat longer certification periods to conserve resources. We estimate that on average each certified household (10,672,000) will receive at least one notice of expiration every 12 months. We estimate burden time per response to be 2 minutes or .0333 hours and total annual burden to be 355,733 hours (10,672,000 × .0333).

7 CFR 273.12(c) and 273.21(j) State Agency Burden in Processing Reports and Changes

When a report is submitted that shows a change, the State agency must determine if and how the change will affect the household's eligibility and benefit level, resolve questionable information, and obtain additional

verification. We estimate that this will be performed on all change reports and 30 percent of the monthly reports (9,071,200 + 5,762,800 = 14,834,080) received. We estimate that this will take approximately 5 minutes or .0833 hour per change and the annual burden to be 1,236,173 hours (14,834,080 × .0833).

Record keeping burden only: Local agencies are required to maintain client case records for three years, 7 CFR 272.1(f), and to perform duplicate participation checks on individual household members to ensure that a member is not participating in more than one household, 7 CFR 272.4(f).

Data is not available on the actual number of local food stamp offices in each State or the actual number of workers (recordkeepers) that would be maintaining case files and performing duplicate participation checks. Previous estimates reflected one record keeper per State, but we believe this was too low. We are using the number of food stamp project areas which is 2,715 for purposes of this submission.

(A) Case Files: The number of case files to be established and maintained is equal to the number of applications expected to be received for initial application and recertification. The number of times recordkeepers must access these case files is equal to the number of documents (105,910,560 responses) expected to be filed annually. We estimate that each action will take a minimum of 2 minutes or .0333 hours. We estimate annual recordkeeping burden associated with creating, filing, and maintaining household case files to be 3,526,822 hours (105,910,560 × .0333).

(B) Monitoring Duplicate Participation: The estimated annual record keeping burden for maintaining this system which is automated by most States is based on the number of applications expected to be received (18,071,800) and the average number of persons (2.5) in each applicant household. Assuming that at least 80% of the applications expected to be received will be subject to this check, the estimated number of duplicate participation checks (responses) that must be performed by State agencies is 36,143,600 (18,071,800 × .80 × 2.5). Burden is estimated to be 15 seconds (or .0042 hours) per response, for a total burden of 151,803 hours annually.

(C) We estimate total recordkeeping burden to be 3,678,625 hours annually (3,526,822 + 151,803). Burden per recordkeeper would be 1,355 hours annually (3,678,625/2,715 recordkeepers).

Summary of burden hours for public—State and local governments, potential applicants, and current participants:

Respondents: 18,071,800
Annual responses: 119,261,240
Total burden hours: 16,275,901

The net affect of these Program changes and adjustments is a reduction in total burden hours of 3,752,042 from 20,027,943 to 16,275,901 due primarily to a reevaluation based on State agencies' automated systems.

Request 2

Title: State Agency Options.

OMB Number: Will be assigned when approved.

Form Number: None.

Expiration Date: Three years after OMB approved.

Type of Request: New.

Abstract: The collections covered under OMB Number 0584–0064 address information that will become part of a household's case file. The information collection and burden estimates associated with the following 4 collections will be assigned a separate OMB number because they are not related to household case files. The number that is assigned will be included in the preamble to the regulations which implements the PRWORA changes.

1. *Homeless shelter estimate—7 CFR 273.9(d):* Section 5(e) of the Act, 7 U.S.C. 2014(e)(5), as amended by section 809 of PRWORA, allows State agencies to use a homeless shelter cost estimate as a separate deduction (instead of allowing only the amount that exceeds 50 percent of income under the excess shelter cost deduction.) We estimate that 20 State agencies will choose this option and that these States will spend 1 hour per year updating the estimate for an annual burden of 20 hours.

2. *Establishing and reviewing standard utility allowances—7 CFR 273.9(d):* State agencies may establish standard utility allowances to be used in lieu of actual utility costs in determining a deduction from household income for shelter expenses. Currently, 49 State agencies have a standard that includes heating or cooling costs and 21 have a standard for utility costs other than heating or cooling. Of the 49 States, we estimate that 10 will develop one or more additional standards each year for the next 3 years. We estimate that this process will take an average of 4 hours since the basic information will likely already be included as a component of the main standard that is now being used. We also estimate that State agencies will continue to review the standards yearly, although they will no longer be required to do so, to determine if increases are needed due to the cost of living. We estimate a minimum of 2.5 hours annually to make this review and adjustment. Total burden for this provision is estimated to be 162.5 hours per year.

3. *Mandatory utility standards—7 CFR 273.9(d).* Section 809 of PRWORA amended Section 5(e)(7)(C) of the Act (7 U.S.C. 2014(e)(7)(C)) to allow State agencies to mandate use of standard utility allowances when the excess shelter cost deduction is computed instead of allowing households to claim actual utility costs provided the standards will not increase program costs. We expect less than 7 States will choose this option so information collection and reporting burden is not required to be assessed.

4. *Establishing methodology for offsetting cost of producing self-employment income—7 CFR 273.10.* The gross amount of self-employment income is reduced by the cost of producing such income. Section 5(m) of the Act, 7 U.S.C. 2014(m), as amended by section 812 of PRWORA allows State agencies to use a reasonable estimate of self-employment costs rather than actual costs to compute net income from self-employment provided the method will not increase program costs. Requests to use such estimates must be submitted to FNS and must include a description of the proposed method; the number, type, and percent of households affected; and documentation indicating that the procedure would not increase Program costs. We estimate that 10 State agencies will submit requests each year for the next three years. It is estimated that these States will incur a one-time burden of at least 10 working hours gathering and analyzing data, developing the methodology, determining the cost implications, and submitting a request to FNS for a total burden of 100 hours annually. State agencies are not required to periodically review their approved methodologies. We do not anticipate that State agencies will voluntarily review their methodologies for change on a regular basis, thus burden is not being assessed for this purpose at this time.

Affected Public: State and local governments.

Estimated Number of Respondents: 49.

Estimated Number of Responses: 138.

Estimated Total Annual Burden on Respondents: 286.

Dated: December 14, 1998.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–36 Filed 1–4–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Short Supply Regulations—Petroleum Products.

Agency Form Number: None.

OMB Approval Number: 0694–0026.

Type of Request: Extension of a currently approved collection of information.

Burden: 1 hour.

Average Time Per Response: 30 to 60 minutes per response.

Number of Respondents: 1 respondents.

Needs and Uses: The Naval Petroleum Reserves Production Act (NPRPA) of 1976, 10 U.S.C. 7420 and 7430(e), restricts the export of any petroleum product produced from crude oil derived from the Naval Petroleum Reserves (NPR). Under Section 754.3(b) of the Export Administration Regulations (EAR), applications for the export of petroleum products listed in Supplement No. 1 to this part that were produced or derived from Naval Petroleum Reserves, or that became available for export as a result of an exchange for a Naval Petroleum reserves produced or derived commodity, other than crude oil, will be denied unless the President makes a finding required under the Naval Petroleum Reserves Production Act (10 U.S.C. 7430). To date, the President has not made any national interest findings that would allow exports under this statute.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: December 30, 1998.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–53 Filed 1–4–99; 8:45 a.m.]

BILLING CODE 3510–33–U

DEPARTMENT OF COMMERCE

International Trade Administration

Multi-Agency Business Development Infrastructure Mission to China and Hong Kong, and Business Development Mission to Korea

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of mission statement.

I. Description of the Missions

The Department of Commerce announces that Secretary of Commerce William M. Daley will travel to South Korea March 10–13, 1999, for a business development mission, and to China and Hong Kong March 14–20, 1999, to lead a multi-agency business development infrastructure mission.

China/Hong Kong. The multi-agency infrastructure mission to China, which was announced during the Presidential Summit in June of this year, is designed to include cabinet and other senior officials representing infrastructure-related agencies in the U.S. Government. The business development mission will include large, medium, and small firms representing sectors such as, but not limited to, information technologies, power generation, oil and gas exploration and downstream development, construction including residential dwellings, environment, transportation, and engineering and financial services in support of efforts to involve more U.S. companies in China's infrastructure development. The Secretary, cabinet agency representatives, and mission members will stop in Hong Kong to pursue substantial infrastructure opportunities there and to meet with Hong Kong officials and local U.S. business.

As currently envisioned, the mission will travel to Beijing, Hong Kong, and two other cities to be determined. The itinerary in Beijing will largely consist of bilateral policy meetings with Chinese senior economic officials, of forums on trade initiatives and issues, and of meetings for U.S. participating firms with key decision makers in relevant ministries and organizations. Outside of Beijing, we envision site visits to key infrastructure projects and to joint ventures between U.S. firms and local firms, round table discussions with senior economic development officials, and matchmaking business appointments for mission participants.

The mission also presents an opportunity to implement a number of other commercial initiatives announced during the Presidential Summit in June. The state and non-state enterprise forum, the housing, insurance, e-commerce, environment, and aviation initiatives will receive focus and attention during the visit.

Korea. Building on the momentum of President Clinton's November 1998 visit to Korea in which Secretary Daley participated, the mission to Korea will broaden commercial ties and help U.S. companies take advantage of opportunities arising out of Korea's economic reform program. The mission will fulfill President Clinton's commitment to President Kim Dae Jung that Secretary Daley will bring a mission to Korea and demonstrate the Administration's support for Korea's recovery and restructuring efforts.

The mission to Korea will bring U.S. companies to this market at a time when it is poised for recovery and is making unprecedented changes in the way business is done. Despite the current economic slowdown, there are many good opportunities for U.S. firms willing to look for and pursue them. Exporters need to be creative with financing and to identify instruments addressing short-term liquidity problems, including U.S. Government institutions such as the Export-Import Bank.

In Korea, the focus will be on commercial opportunities, including those presented by the continuing IMF-mandated economic reform program. The Secretary will meet with government officials to discuss bilateral concerns, advocate for U.S. commercial interests, and advance other relevant policy initiatives. Briefings and matchmaking business appointments will be made for members of the business delegation. Individual country briefings will include local public and private sector officials to discuss developments in the country that affect the commercial environment.

The mission will depart Washington on March 10. One group will visit Korea March 12–13 and a second group will visit China March 14–20.

II. Commercial Setting for the Missions

China is considered to offer the lion's share of future growth in sales of goods and services for many American companies. Exports reached $13 billion and imports, $62.5 billion in 1997. China has become our fourth largest trading partner and supplier of imports. China is our fifteenth largest destination for U.S. exports. Since the mid-1980s when U.S. trade with China began to grow substantially, U.S. imports from China have continually outpaced U.S. exports to China. This has resulted in a large and growing trade deficit, now our second largest deficit after Japan. The deficit has grown four times since 1990 ($10.4 billion) to $49.7 billion in 1997, and is projected to reach $58 billion in 1998.

Beijing is the capital and the locus of much of the decision making on infrastructure development, as well as on trade policy. Besides Beijing, two other stops with significant infrastructure opportunities will be selected.

Hong Kong, which reverted to Chinese sovereignty on July 1, 1997, is now a Special Administrative Region (SAR) of China. HK SAR operates under the late Deng Xiaoping's ''one country, two systems'' model wherein HK SAR continues largely with its way of life with minor modifications. A chief executive, Tung Chee Hwa, chosen by a ''Selection Committee'' of 400 people, now presides over the government. The HK SAR is a separate customs territory, maintains its own freely convertible currency, enjoys independent status in the WTO and other multilateral and bilateral fora, and continues with one of the most open and free market based economies in the world today. China is responsible for Hong Kong's defense and foreign affairs.

Hong Kong's most significant challenge currently is the Asian financial crisis, which has resulted in a drop of some 50 percent in real estate prices, and over 60 percent in stock prices. Recent measures by the HK SAR government to defend the Hong Kong dollar against speculative attacks and to stabilize the stock market through the direct purchase of shares appear to have had a positive effect, with interest rates returning to normal levels and the Hang Seng Index recovering by over 30 percent since the government's intervention. Hong Kong is our 11th largest destination for exports. The U.S. ran a $4.8 billion trade surplus with Hong Kong in 1997. The American Chamber of Commerce in Hong Kong is the largest U.S. chamber outside of North America, with approximately 2,600 members.

Before the financial crisis hit Korea in the fall of 1997, Korea was our fifth largest export market, accounting for $25 billion in exports and a $2 billion trade surplus that year. Under the auspices of the $58 billion stabilization package put together last winter under IMF leadership, financial markets in Korea have stabilized and recovered somewhat from last winter's lows. The domestic economy, however, has gone into recession. Unemployment has tripled over the past twelve months, while real GDP could fall by as much as 7 percent this year. There are signs, however, that the economy will soon turn the corner. A number of forecasters expect a return to positive growth in the second half of 1999.

Korea has made tremendous progress in its reform program, particularly in the areas of capital account liberalization and financial sector restructuring. Corporate restructuring remains the linchpin to recovery yet is also the most difficult area of reform for the government to influence.

The recession combined with the scarcity of trade financing has severely affected U.S. exports to Korea. Exports for January-October 1998 are down 42 percent from the same period in 1997. U.S. imports from Korea were up 2 percent. During President Clinton's November visit to Korea, the Export-Import Bank committed another one billion dollars in medium term credits for Korea, bringing Ex-Im's total short and medium term commitments to $4 billion for 1998.

III. Goals for the Missions

The missions will further both U.S. commercial policy objectives and advance specific business interests. They are aimed at:

- Expanding U.S. exports to China's and Hong Kong's priority infrastructure development sectors and projects; underscoring the need to reduce our growing trade deficit with China, estimated to be $60 billion in 1998;
- Implementing commercial initiatives agreed to during the June Summit and the 12th session of the U.S.-China Joint Commission on Commerce and Trade;
- Advocating on behalf of U.S. firms already active in China, Hong Kong, and Korea;
- Resolving market access issues for U.S. companies in all locations;
- Maintaining visibility for U.S. companies wishing to gain or maintain a foothold in the Korean market once recovery begins; and
- Demonstrating U.S. support for continued enterprise, financial and corporate reforms in China and Korea.

IV. Scenario for the Missions

The mission to China and Hong Kong will emphasize the need for greater U.S. participation in China's and Hong Kong's infrastructure development and advance outcomes and initiatives agreed to during the U.S.-China 1998 Summit. The mission to Korea will emphasize the long-term U.S. business interest in the country and reaffirm the Administration's positive view of the economic reforms occurring under President Kim's administration and the IMF stabilization package.

Briefings and matchmaking business appointments will be made for members of the business delegation. The business of the mission will consist of:

- Embassy briefings on the economic/commercial climates;
- Meetings with Ministers and other senior level government officials with responsibilities for the mission's focus sectors;
- Meetings with potential buyers, agents/distributors and partners.
- Meetings with the U.S. business community.
- Forums, roundtables, and other policy focused discussions with senior economic decision-makers.

The Secretary will meet with the leadership and other government senior officials and with U.S. business representatives in all three locations. In China, the Secretary will underscore the need for greater market access in key sectors, to reduce our growing trade imbalance with China, and to advocate for U.S. firms bidding on China's priority infrastructure development projects. The Secretary will urge continued progress from China in meeting both market access and other demands of the WTO accession process. In Hong Kong, the Secretary will likely meet with the Chief Executive of the SAR and other senior leaders to signify continued strong U.S. interest in the integrity of Hong Kong's autonomy and free market system under the ''one country, two systems'' sovereignty arrangement with China. He will also urge selection of U.S. firms for Hong Kong's infrastructure efforts with $30 billion in projects to be developed over the next five years. Additional forums on the free market system and China's reform agenda for state and non-state enterprises, housing, commercial law and other topics are possible.

While in Korea, the Secretary will emphasize U.S. market access concerns, advocate on behalf of U.S. companies, promote bilateral and multilateral trade

policy objectives, and reiterate USG support for Korea's economic reforms, while stressing that continued reforms are key to maintaining economic, political and commercial momentum. He will also co-chair a meeting of the U.S.-Korea Committee on Business Cooperation (CBC).

V. Criteria for Participation of Companies

The recruitment and selection of private sector participants in each mission will be conducted according to the Statement of Policy governing Department of Commerce-led trade missions announced by Secretary Daley on March 3, 1997. Participants will be selected separately for the China/Hong Kong business development infrastructure mission and for the Korea business development mission and should fill out separate applications for each mission. Companies may apply for either or both missions, and will be selected according to the criteria set for below. Approximately 15 companies will be selected for the China/Hong Kong business development infrastructure mission and approximately 10 companies will be selected for the Korea business development mission. Selection for one mission does not confer priority for selection for the other mission.

Eligibility

Participating companies must be incorporated in the United States. A company is eligible to participate only if the products and/or services that it will promote on the relevant mission either (a) are manufactured or produced in the United States; or (b) if manufactured or produced outside the United States, are marketed under the name of a U.S. firm and have U.S. content representing at least 51 percent of the value of the finished good or service. (At the discretion of the Department, which will generally be exercised on a mission-specific and sector-by-sector basis, the 51 percent U.S. content requirement may be modified or waived.)

Selection Criteria

Companies will be selected for participation on the basis of:

- Level of seniority of designated company representatives and its appropriateness to the mission objectives;
- Relevance of a company's business and product line to the plan and objective of the mission (see below);
- Past, present and prospective business activity in Asia, particularly in China, Hong Kong and/or Korea, as applicable; and
- Diversity of company size, type, location, demographics and traditional under-representation in business.

In addition, the Department may consider whether the companies' overall business objectives, including those of any U.S. or overseas affiliates, are fully consistent with the missions' foreign and commercial policy objectives.

Participants in the China portion of the mission will be drawn from several infrastructure sectors, including, but not limited to, the following:

- Environmental technologies,
- Information technologies/ telecommunications,
- Housing construction and building materials,
- Power generation,
- Oil exploration and development,
- Transportation, and
- Engineering and financial services.

Companies for the Korea portion of the mission will be drawn from several sectors, including, but not limited to, the following:

- Environmental technologies,
- Information technologies/ telecommunications,
- Infrastructure, and
- Energy.

An applicant's partisan political activities (including political contributions) are irrelevant to the selection process.

VI. Time Frame for Applications

Applications for the business development mission to China and Korea will be made available beginning on or about January 4, 1999. The fees to participate in these missions have not yet been determined. The fees will not cover travel or lodging expenses. For additional information on the trade missions or to obtain an application, business persons should be referred to Lucie Naphin, Director of the Office of Business Liaison, or Jennifer Andberg, Office of Business Liaison, at 202–482–1360. Applications should be submitted to Lucie Naphin by February 1, 1999, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit.

Dated: December 29, 1998.

Lucie Naphin,

Director, Office of Business Liaison.

[FR Doc. 99–131 Filed 1–4–99; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Inshore Gulf of Maine Area Multispecies Fishing Vessel Declaration

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 8, 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 Richard A. Pearson, One Blackburn Drive, Gloucester, MA 01930, (978) 281–9279.

SUPPLEMENTARY INFORMATION:

I. Abstract

The New England Fishery Management Council (NEFMC) is currently considering three different management alternatives for the Gulf of Maine (GOM) multispecies fishery for inclusion in Framework Adjustment 27 to the Northeast Multispecies Fishery Management Plan (FMP). The NEFMC has also discussed considering the selection of individual components of these three various management alternatives as part of the final management measures for Framework Adjustment 27.

One of the management alternatives proposes to establish two new permit subcategories and to require vessel owners to annually declare into a category upon renewal of their multispecies permit. The two categories would be: (1) GOM inshore/offshore, and (2) GOM offshore/Cod Trip Limit Exemption Area. There would be different management measures for these two categories.

To minimize the reporting burden on the industry, NMFS proposes that all affected vessels would be enrolled into Category 2 by default, unless they filed

the required form to declare their enrollment into Category 1. Declaration into Category 1 would allow them to fish the inshore areas of the Gulf of Maine, in addition to the offshore areas. Vessel owners in Category 2 would be required to fish in the GOM offshore area or in the existing Cod Trip Limit Exemption Area. Specific management measures for these two areas have not yet been determined. The inshore area has preliminarily been described as an area extending from 43°50′ N. Lat. and the Maine coast to 43°50′ N. Lat., 70°00′ W. Long. to 43°00′ N. Lat., 70°15′ W. Long. to 42°00′ N. Lat., 70°15′ W. Long. to 42°00′ and the Massachusetts coast.

II. Method of Collection

Vessel owners electing to declare into the GOM inshore/offshore category (category 1) would be required to select that category on a form.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit (Gulf of Maine multispecies permit holders electing to fish in inshore or near shore areas).

Estimated Number of Respondents: 475.

Estimated Time Per Response: 2 minutes.

Estimated Total Annual Burden Hours: 16.

Estimated Total Annual Cost to Public: $237.

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: December 30, 1998.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–38 Filed 1–4–99; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122898H]

Endangered and Threatened Species; Retention of Species on Candidate Species List Under the Endangered Species Act (ESA)

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

ACTION: Notice of retention of the Gulf of Maine/Bay of Fundy population of harbor porpoise on the ESA candidate species list.

SUMMARY: NMFS retains the Gulf of Maine/Bay of Fundy (GOM/BOF) population of harbor porpoise (*Phocoena phocoena*) on the ESA list of candidate species. Retention on the ESA candidate species list will serve to notify the public of NMFS' concern regarding this population, and it will ensure continued monitoring of the species' status.

DATES: Effective January 5, 1999.

FOR FURTHER INFORMATION CONTACT: Margot Bohan, 301/713–2322.

SUPPLEMENTARY INFORMATION: In a separate document published today in the **Federal Register**, NMFS withdrew its January 7, 1993, proposal to list the GOM/BOF population of harbor porpoise as threatened under the ESA. Taking into account the implementation of bycatch reduction measures in the GOM by the New England Fishery Management Council, the Harbor Porpoise Take Reduction Plan in the Gulf of Maine and Mid-Atlantic waters, pursuant to section 118 of the Marine Mammal Protection Act, and a similar harbor porpoise bycatch mitigation program that is being implemented by the Department of Fisheries and Oceans-Canada, NMFS concluded that listing the GOM/BOF population of harbor porpoise as threatened under the ESA is not warranted at this time.

NMFS will retain the GOM/BOF population of harbor porpoise on the ESA list of candidate species in order to continue to monitor the species' status. The ESA candidate species list serves to notify the public that NMFS has concerns regarding these species/vertebrate populations that may warrant listing it as a threatened or endangered species in the future; this list may also facilitate voluntary conservation efforts.

Dated: December 30, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–139 Filed 1–4–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122898D]

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the City of Seattle Habitat Conservation Plan, King County, Washington

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

ACTION: Notice of application and availability for public comment.

SUMMARY: This notice advises the public that the City of Seattle has applied to the Fish and Wildlife Service and NMFS (together, the Services) for an Incidental Take Permit (Permit) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). This application was previously noticed in the **Federal Register** on December 11, 1998, under the Department of the Interior, Fish and Wildlife Service. This additional notice is to ensure NMFS compliance with the notification requirements under section 10(c) of the Act. The proposed permit would authorize the take of the following endangered or threatened species incidental to otherwise lawful management activities in the Cedar River Municipal Watershed and within the Cedar River in King County, Washington: northern spotted owl (Strix occidentalis caurina), marbled murrelet (Brachyramphus marmoratus marmoratus), bald eagle (Haliaeetus leucocephalus), grizzly bear (Ursus arctos), gray wolf (Canis lupus), and peregrine falcon (Falco peregrinus). The proposed permit also would authorize future incidental take of 77 currently unlisted fish (anadromous and resident) and wildlife species, including the chinook salmon (Oncorhynchus tshawytscha) and the Coastal Puget Sound distinct population segment of the bull trout (Salvelinus confluentus),

which are proposed for listing under the Act, should they become listed in the future. The permit would be in effect for 50 years.

The application includes: (1) the proposed Habitat Conservation Plan (Plan), which fully describes the proposed projects and mitigation, and details a strategy for minimizing and mitigating all anticipated incidental take, as required in Section 10(a)(2)(B) of the Act; and (2) the proposed Implementing Agreement. Activities covered by the requested Permit and addressed by the proposed Plan include: (1) drinking water supply operations; (2) management of land and forest resources (timber and other forest resources); (3) hydroelectric power generation; and, (4) fishery mitigation. The Services also announce the availability of an Environmental Assessment for the Permit application.

This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act regulations. The Services are furnishing this notice in order to announce the availability of these documents and allow other agencies and the public an opportunity to review and comment upon these documents. All comments received will become part of the public record and will be available for review pursuant to section 10(c) of the Act.

DATES: Written comments on the permit application, Environmental Assessment, Plan, and Implementing Agreement must be received from interested parties no later than February 9, 1999.

ADDRESSES: Requests for documents should be made by calling the City of Seattle at (206) 684-4144. Copies are also available for viewing, or partial or complete duplication, at all King County and City of Seattle libraries, and at four University of Washington main campus libraries, including the Fisheries and Oceanography Library, Forest Resources Library, Engineering Library, and at the Federal Publications desk of the Suzzallo Library. Comments should be mailed to Seattle Public Utilities, P.O. Box 21105, Seattle, Washington 98111-3105. Comments and materials received will also be available for public inspection, by appointment, during normal business hours by calling (206) 684-4144. Requests for information on the draft Plan should be directed to Jim Erckmann, Project Manager. Requests for information on the draft Environmental Assessment and a draft Environmental Impact Statement, prepared pursuant to the State of Washington's Environmental Policy Act, should be directed to Jim Freeman, Senior Watershed Planner. Both can be contacted at Seattle Public Utilities, 19901 Cedar Falls Road SE., North Bend, Washington, 98045 (telephone: 206/233-1512; facsimile: 206/233-1527).

FOR FURTHER INFORMATION CONTACT: Brian Bogaczyk, Project Biologist, Fish and Wildlife Service, 510 Desmond Drive, SE., Suite 102, Lacey, Washington, 98503-1273, (telephone: 360/753-5824; facsimile: 360/534-9331), and Matt Longenbaugh, Project Biologist, National Marine Fisheries Service, 510 Desmond Drive, SE., Suite 103, Lacey, Washington, 98503-1273 (telephone: 360/753-7761; facsimile: 360/753-9517). The Plan, Implementing Agreement, and the Environmental Assessment are also available for inspection at the above Service offices.

SUPPLEMENTARY INFORMATION: This application was previously noticed in the **Federal Register** on December 11, 1998 (63 FR 68469). Section 9 of the Endangered Species Act and Federal regulation prohibit the ''taking'' of a species listed as endangered or threatened. The term take is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, the Services, under limited circumstances, may issue permits to take listed species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are promulgated in 50 CFR 17.22; regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

Background

The Cedar River Municipal Watershed (Watershed) is located about 30 miles southeast of the City of Seattle (City), just south of the Interstate 90 corridor. The City has prepared the proposed Plan to comply with the Act and to address a variety of related natural resource issues. The Plan will cover the City's 90,546-acre Watershed and the City's water supply and hydroelectric operations on the Cedar River, which discharges into Lake Washington. The proposed Plan is a set of mitigation and conservation commitments related to ongoing water supply, hydroelectric power supply, fishery mitigation, and watershed management activities.

The draft Plan is based on a decade of studies and the results of over 4 years of analysis and negotiations with five State and Federal agencies as documented in an Agreement in Principle, dated March 14, 1997. The Agreement in Principle addresses not only issues under the Act but also related issues under state law and issues with the U.S. Army Corps of Engineers (Corps). The Corps manages lake levels in Lake Washington, and navigational traffic between Lake Washington and Puget Sound, through operation of the Hiram Chittenden Locks (Ballard Locks) and Lake Washington Ship Canal.

Covered lands in the proposed action include the City-owned lands upon which the Permit would authorize incidental take of covered species. This includes the Watershed, totaling about 90,546 acres. The Cedar River discharges into Lake Washington at the city of Renton. City operations in the municipal watershed influence the Cedar River between the Landsburg Diversion Dam, where the City diverts water for municipal and industrial use, and Lake Washington, which is 21.8 mi in length. The City owns essentially all of the Watershed. Most of the watershed is forested, primarily with conifers.

Proposed covered activities include City operations on the Cedar River in conjunction with its water supply, hydroelectric power generation, land management activities, and fishery mitigation. Water supply and hydroelectric generation activities include management of the reservoir complex, including an overflow dike, which impounds Chester Morse Lake, and the Masonry Dam, which impounds the Masonry Pool to the west of the lake. These activities also include instream flow management for fish for 12.4 mi above and 21.8 mi downstream of the Landsburg Diversion Dam. Covered activities downstream of Landsburg are restricted specifically to the impacts of City operations and facilities on species using those waters and covered by this Plan, and does not apply to the impacts of activities by other public agencies or private parties. In general, covered activities downstream of Landsburg include mitigation, conservation, research, and monitoring activities carried out under the Plan and two related agreements, an Instream Flow Agreement and a Landsburg Mitigation Agreement.

Municipal watershed management activities include forest practices as described in the Washington State Forest Practices Act (RCW 76.09) and Forest Practices Rules and Regulations (WAC 222-08), including timber harvest, thinning, reforestation, and mechanical brush control; construction, repair, reengineering, decommissioning, and maintenance of forest roads, including use of gravel pits and other rock sources, as well as maintenance and replacement of culverts and bridges; and sale of forest products.

Fishery mitigation activities include provision of streamflows for chinook, coho (Oncorhynchus kisutch), and sockeye (Oncorhynchus nerka) salmon and steelhead trout (Oncorhynchus mykiss), and expansion of a pilot hatchery for sockeye salmon; construction of fish passage facilities (both upstream and downstream) for chinook and coho salmon, and steelhead and cutthroat trout (Oncorhynchus clarki) at Landsburg Dam; and funding salmon habitat restoration in the lower Cedar River.

Other covered watershed activities include actions to protect and restore watershed habitats, both aquatic and upland; cultural resource management and educational programs within the municipal watershed, including a public tour and field trip program and construction of educational and cultural facilities, such as the planned educational resource center at Cedar Falls; scientific research, both by City staff and outside scientists; and other activities or facilities as identified in the Plan.

The Plan includes habitat-based conservation and mitigation strategies for all species addressed in the Plan, and species-specific conservation and mitigation strategies for the 14 species of greatest concern, which include all currently listed species. The species addressed in the Plan include resident and anadromous salmonid fishes, and a variety of amphibians, birds, mammals, and invertebrates.

The Federal action of issuing an Incidental Take Permit has the potential to affect the human environment. The Services' decision of whether to issue the proposed Permit, is an action subject to review under the National Environmental Policy Act (40 CFR 1506.6). In addition to the National Environmental Policy Act requirements, the City's proposed actions are subject to review under the Washington State Environmental Policy Act. The Services' Environmental Assessment and the City's Environmental Impact Statement are combined into one document. Following public review of the proposed Plan and Environmental Assessment/Environmental Impact Statement, the Services and the City must review any comments received and respond to those comments in writing or in changes to the documents, where appropriate.

The Environmental Assessment/ Environmental Impact Statement will analyze the proposed action as well as a full range of reasonable alternatives, and the associated impacts of each. The proposed action contains three components, including: (1) Watershed Management; (2) Anadromous Fish Mitigation; and (3) Instream Flows. Alternatives have been developed through public and internal scoping for each of these three components, and are compared and analyzed in the Environmental Assessment/ Environmental Impact Statement.

Watershed management alternatives include: (1) No Action (continue current harvest practices, with 58 percent of the lands in a no-commercial harvest reserve); (2) Proposed Action (including conservation strategies for habitats and wildlife, with 64 percent of the lands in a no-commercial harvest reserve); (3) Long-term Sustainable Thinning Alternative (including conservation strategies for habitats and wildlife, with 64 percent of the lands in a no-commercial harvest reserve); (4) Thinning Alternative with phased out commercial harvest over the 50-year life of the Permit (including conservation strategies for habitats and wildlife, with 68 percent of the lands initially in a no-commercial harvest reserve and increasing over the life of the Permit); and (5) No Commercial Timber Harvest Alternative (including conservation strategies for habitats and wildlife, with 100 percent of the lands in a no-commercial harvest reserve). Alternatives 3, 4, and 5 include essentially the same conservation strategies for streams, riparian areas, upland habitat, and special habitat areas, as Alternative 2, the Proposed Action.

Anadromous fish mitigation alternatives include: (1) No Action (continued operation of a pilot sockeye salmon hatchery with no guarantee of mitigation for chinook salmon, coho salmon, or steelhead trout); (2) Proposed Action (conservation strategies for chinook salmon, coho salmon, sockeye salmon, and steelhead trout, including upstream and downstream passage facilities, and habitat restoration and protection measures, with expansion of the sockeye hatchery to produce 34 million fry annually); (3) Down-sized Sockeye Hatchery Alternative with savings going towards downstream habitat restoration (with expansion of the sockeye hatchery to produce 17 million fry annually); (4) Deferred Hatchery Construction Alternative contingent on further studies; and (5) All Downstream Habitat Restoration and Protection Alternative (all funding would be used for habitat restoration and protection, and none for sockeye hatchery expansion).

Instream flow alternatives include: (1) No Action (continue current flow management practices); and (2) Proposed Action, with primary features including guaranteed flows and supplemental flows for salmon and steelhead trout spawning and fry outmigration for sockeye salmon in the lower Cedar River; adaptive management of flows for protection of salmon and steelhead redds (egg clusters); funding for improvements at Ballard Locks for juvenile outmigration, establishment of minimum flows necessary for anadromous and resident fish in bypass reach below Masonry Dam; established downramping rates, maintain existing annual municipal water yield; public service announcements promoting water conservation for fish; Lower Cedar River monitoring study of tributary and subsurface inflows; and establishment of a multi-agency commission to advise the City with respect to managing flows for fish.

This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act regulations, and the Services will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the Act and National Environmental Policy Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of listed species. The final permit decision will be made no sooner than 60 days from the date of this notice.

Dated: December 28, 1998.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–129 Filed 1–4–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 123098B]

Notice of Public Meetings Regarding the Preparation of a Supplemental Environmental Impact Statement for Potential Modification of a Habitat Conservation Plan on Lands Administered by Plum Creek Timber Company in the State of Washington

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of public meetings.

SUMMARY: NMFS and FWS (the Services) will be conducting public meetings, in conjunction with the public comment period, regarding a Draft Supplemental Environmental Impact Statement addressing effects of a proposed land exchange with the U.S. Forest Service in the Interstate–90 corridor of Washington. If the proposed land exchange takes place, the Endangered Species Act (ESA) incidental take permit issued to Plum Creek Timber Company would be modified accordingly. Permit PRT–808398 was issued on June 27, 1996, and allows Plum Creek to take federally listed species, under the provisions of section 10(a)(1)(B) of the ESA, as amended.

DATES: Public meetings will be held from 6:00 p.m. to 8:00 p.m. on January 20 and 21, 1999.

ADDRESSES: Public meetings will be held at the following locations: on January 20, 1999, at The Inn at Goose Creek, 1720 Canyon Road, Ellensburg, Washington; on January 21, 1999, at the Holiday Inn, 1801 12th Avenue, NW, Issaquah, Washington.

FOR FURTHER INFORMATION CONTACT: William Vogel, Wildlife Biologist, Fish and Wildlife Service, 510 Desmond Drive, Suite 101, Lacey, Washington 98503, (360) 753-9440; or Dennis Carlson, Fishery Biologist, National Marine Fisheries Service, 510 Desmond Drive, Suite 101, Lacey, Washington 98503, (360) 753-9440.

Interested parties may contact the Services at the address listed above to receive additional information, including a map for the public meeting location.

Dated: December 29, 1998.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Fish and Wildlife Service, Portland, Oregon.

Dated: December 30, 1998.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–137 Filed 1–4–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122298C]

Marine Mammals, File No. 772#69

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 the Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla shores Drive, La Jolla, CA 92038, has requested an amendment to scientific research Permit No. 1024.

DATES: Written or telefaxed comments must be received on or before February 4, 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, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

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 13705, 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. 1024, issued on December 30, 1996 (62 FR 1875) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 1024 authorizes the permit holder to: conduct level B harassment activities [*i.e.* censuses] on, capture, handle, and release Antarctic pinnipeds in the South Shetland Islands, Antarctica. The holder requests authorization to increase the number of Antarctic fur seal (*Arctocephalus gazella*) pups and juveniles to be captured and handled for oxygen consumption and developmental physiology studies. The Holder proposes to conduct these activities at Cape Shirreff on Livingston Island, Antarctica.

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: December 23, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–136 Filed 1–4–99; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Technical Assistance Workshops and Conference Calls for Potential Applicants for AmeriCorps Indian Tribes and America Reads Challenge Program Funds

AGENCY: Corporation for National and Community Service.

ACTION: Notice of pre-application technical assistance workshops and conference calls.

SUMMARY: The Corporation for National and Community Service (Corporation) has scheduled two workshops and two conference calls to provide technical assistance to Indian Tribes and organizations representing Alaska Natives interested in applying for AmeriCorps Indian Tribes and America Reads Challenge program funds.

DATES: The workshops will be held January 20–21, 1999 and February 10–11, 1999. The conference calls will be held February 16, 1999 and February 18, 1999.

FOR FURTHER INFORMATION CONTACT: To register for a workshop or a conference call and to obtain the information needed to participate, contact Pattie

Howell, (202) 606–5000, ext. 105. T.D.D. (202) 565–2799. For individuals with disabilities, information will be made available in alternative formats upon request.

SUPPLEMENTARY INFORMATION:

AmeriCorps is the national service program that engages Americans of all ages and backgrounds in meeting critical education, public safety, environmental, and other human needs. Each year, the Corporation for National Service provides funds to programs operated by Indian Tribes and organizations representing Alaska Natives to support projects such as tutoring children, restoring streams and parks, building playgrounds and housing, assisting elders, and serving in health clinics.

The America Reads Challenge is a comprehensive, nationwide effort to create in-school, after-school, weekend, and summer tutoring programs in reading. Working to support the efforts of teachers and parents, this Challenge calls on Americans in all fields—schools, libraries, religious organizations, universities, community and national groups, and cultural organizations, as well as college students, business leaders, and senior citizens—to ensure that every child can read independently by the end of the third grade.

For more information about the activities supported by the Corporation for National Service, visit our web site: http://www.nationalservice.org.

The Corporation for National Service has scheduled several workshops and conference calls regarding the application process for AmeriCorps Indian Tribes an America Reads Challenge grant. These sessions are designed to convey to participants an understanding of funding opportunities at the Corporation, tips on preparing a successful application for the 1999 AmeriCorps Indian Tribes and America Reads Challenge grant competitions, and the framework objectives for an AmeriCorps and an America Reads Challenge program.

Workshop #1

Dates: January 20–21, 1999.

Location: Bureau of Indian Affairs, Two Arizona Center, 400 N. 5th Street, 12th Floor, Phoenix, AZ.

Nearby Hotels:

Phoenix Hilton, 602/212–5306

Ramada Downtown, 602/258–3411

Holiday Inn Express, 602/452–2020

Workshop #2

Dates: February 10–11, 1999.

Location: Corporation for National Service, 1201 New York Avenue N.W., Washington, DC.

Nearby Hotels:

Comfort Inn, 202/712–9371

Grand Hyatt, 202/582–1234

Crowne Plaza, 202/682–0111

Conference Calls

Dates: February 16, 1999 February 18, 1999.

Time: 3:00 p.m. Eastern time.

Dated: December 30, 1998.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–125 Filed 1–4–99; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and 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 March 8, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat__*Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

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: December 29, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Vocational and Adult Education.

Type of Review: New.

Title: Vocational and Technical Education National Centers.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 15; *Burden Hours:* 1,350.

Abstract: This form will be used by applicants to apply for funding under the National Centers Program. The information will be used to make cooperative agreements.

[FR Doc. 99–87 Filed 1–4–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 4, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Werfel__d@al.eop.gov*. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, 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 INFOMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: December 30, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education.

Type of Review: Revision.

Title: Campus-Based Reallocation Form E40–4P.

Frequency: On occasion.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Burden: Responses: 3,000; Burden Hours: 500.

Abstract: The Reallocation Form is necessary to determine the funds available and to establish eligibility for the distribution of supplemental Federal Work-Study awards.

Office of Postsecondary Education.

Type of Review: Extension.

Title: Federal Stafford Loan (Subsidized and Unsubsidized) Program Master Promissory Note.

Frequency: On occasion.

Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions.

Reporting and Recordkeeping Burden: Responses: 1,400,000; Burden Hours: 1,400,000.

Abstract: This promissory note is the means by which a Federal Stafford Program Loan borrower promises to repay his or her loan.

[FR Doc. 99–86 Filed 1–4–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald.

DATES: Saturday, January 16, 1999: 8:30 a.m.–12:30 p.m. (public comment session: 11:45 a.m.–12:00 p.m.)

ADDRESSES: Fernald Environmental Management Project, Large Laboratory Conference Room, 7400 Willey Road, Hamilton, Ohio

FOR FURTHER INFORMATION CONTACT: Gwen Doddy, Fernald Citizens' Advisory Board (FCAB), c/o Phoenix Environmental, P.O. Box 544, Ross, Ohio 45061, or call the FCAB office at (513) 648–6478.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda

8:30 a.m. Call to Order
8:30–8:40 Chairs Remarks and Announcements
8:40–9:20 FCAB Reorganization and Committee Assignments
9:20–9:30 Fernald Waste Transportation Update
9:30–10:00 Transportation Workshop Agenda
10:00–10:15 Break
10:15–11:15 Fernald Future Use Planning
11:15–11:45 Committee Updates
11:45–12:00 Public Comment
12:00–12:30 Wrap Up
12:30 p.m. Adjourn

A final agenda will be available at the meeting, Saturday, January 16, 1999.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair 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, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to the holidays.

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 by writing to Gwen Doddy, Fernald Citizens' Advisory Board, c/o Phoenix Environmental, P.O. Box 544, Ross,

Ohio 45061 or by calling the FCAB Office at (513) 648–6478.

Issued at Washington, DC on December 29, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–90 Filed 1–4–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 98–98–NG]

Boston Gas Company; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it issued DOE/FE Order No. 1445 (Order 1445) on December 17, 1998, granting Boston Gas Company (Boston Gas) authorization to import at Bailyville, Maine, up to 43,200 Mcf per day of natural gas from Canada for a period of eight years commencing November 1, 1999, through March 31, 2007. This gas will originate from natural gas fields off the east coast of Canada near Sable Island. The proposed Maritimes and Northeast Pipeline is the transportation facility that will deliver the gas from Nova Scotia to the United States pipeline grid in Massachusetts.

Boston Gas, a Massachusetts local distribution company, intends to use the imported gas, to be purchased from Imperial Oil Resources Limited (Imperial), as part of its supply portfolio. The import will replace western Canada gas supplies acquired from Imperial pursuant to DOE/FE Opinion and Order No. 552 (Order 552), issued November 27, 1991 (1 FE ¶ 70,503). Boston Gas requests Order 552 be terminated November 1, 1999, to coincide with the effective date of Order 1445.

Order 1445 may be found on the FE web site at http://www.fe.doe.gov., or on our electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 22, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import and Export Activities, Office of Fossil Energy.

[FR Doc. 99–91 Filed 1–4–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Availability; Viability Assessment of a Repository at Yucca Mountain

AGENCY: Department of Energy (DOE).

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of a DOE report to Congress entitled *Viability Assessment of a Repository at Yucca Mountain*. The Viability Assessment is essentially a technical status report of the ongoing DOE scientific investigations concerning the potential for locating a geologic repository for spent nuclear fuel and high-level waste at Yucca Mountain, Nevada. It brings together data drawn from 15 years of scientific investigation and design work at Yucca Mountain and identifies what the DOE has learned about the site and what it believes are the critical areas for additional investigation. Submission of this report to the President and the Congress was directed in the Fiscal Year 1997 Energy and Water Development Appropriations Act.

ADDRESSES: Any written requests for information or copies of the *Viability Assessment of a Repository at Yucca Mountain* should be directed to:

Allen Benson,
Director, Institutional Affairs,
Yucca Mountain Site Characterization Office, M/S 523,
U.S. Department of Energy, 1261 Town Center Drive,
Las Vegas, NV 89134.

The *Viability Assessment of a Repository at Yucca Mountain* is available in both printed and CD ROM formats. Persons wishing to request copies or receive information by telephone should call 1–800–225–6972. Electronic requests for copies may be made on the Internet at: <http://www.ymp.gov/learn/order.htm. Electronic copies of the Viability Assessment or DOE supporting documents are available for viewing and downloading on the Internet at <http://www.ymp.gov/va.htm. Information to assist in locating non-DOE reference documents may also be obtained at that address. The *Viability Assessment of a Repository at Yucca Mountain* may also be obtained at DOE Reading Rooms located at:

U.S. Department of Energy, 1141 S. Highway 160 No. 3, Pahrump, NV 89048, 702–727–0896
U.S. Department of Energy, 100 North E Avenue & State Route 374, Beatty, NV 89003, 702–553–2130
U.S. Department of Energy, 1000 Independence Ave, SW, Room 1E–190, Washington, DC 20585 (Document viewing only, for copies call 1–800–225–6972.)

FOR FURTHER INFORMATION CONTACT: For further information on the *Viability Assessment of a Repository at Yucca Mountain* please contact: Allen Benson, Director of Institutional Affairs, Yucca Mountain Site Characterization Office, at the above address, by telephone at 1–800–225–6972, or by e-mail through our Website at http://www.ymp.gov.

SUPPLEMENTARY INFORMATION:

Background

The Viability Assessment summarizes a large technical body of work from field investigations, laboratory tests, models, analyses, and engineering that is described in cited references. The Viability Assessment identifies the uncertainties relevant to the technical defensibility of the DOE analyses and designs, the approach to managing these uncertainties, the status of work toward the site recommendation and license application, plans for the remaining work, and the estimated costs of completing a license application and constructing and operating a repository.

The Viability Assessment is not intended to be a decision document, but rather, was developed as a program management tool and milestone. The Viability Assessment in no way constrains further DOE investigations. If new or different issues are identified in response to the Viability Assessment that are important to the evaluation of the suitability of the site, DOE will undertake any necessary investigation into those issues.

The Viability Assessment

In the Fiscal Year 1997 Energy and Water Development Appropriations Act Congress required the DOE to produce a Viability Assessment of the work being done to characterize the site at Yucca Mountain, Nevada, approximately 100 miles from Las Vegas, Nevada. Congress stipulated that the Viability Assessment include:

''(1) the preliminary design concept for the critical elements for the repository and waste package;

(2) a total system performance assessment, based upon the design concept and the

scientific data and analysis available by September 30, 1998, describing the probable behavior of the repository in the Yucca Mountain geological setting relative to the overall system performance standards;

(3) a plan and cost estimate for the remaining work required to complete a license application; and

(4) an estimate of the costs to construct and operate the repository in accordance with the design concept.'' (Public Law 104–206-September 30, 1996)

The Viability Assessment is presented in five volumes. Volume 1 provides an introduction to the assessment and a description of site characteristics. This includes the purpose and scope of the assessment; a description of the radioactive waste forms destined for geologic disposal; discussion of the technical challenges posed by permanent geologic disposal; a historical perspective of the disposal program; and, a description of the site at Yucca Mountain, Nevada.

Volume 2 presents a preliminary design concept for the repository and waste package. The discussion and descriptions include: design process and design bases; the preliminary design concept for repository surface and subsurface facilities, and the waste package with associated engineered barriers; concepts for construction, operation, monitoring, and closure of a repository; design flexibility considerations; and, major design alternatives.

Volume 3 is a total system performance assessment of a repository at Yucca Mountain. The analyses and discussion include: a definition of total system performance assessment; the objectives, approach, methodology and base case results of the performance assessment; description of the development of the components of the technical model used; and, sensitivity analyses of the components of the performance assessment.

Volume 4 is the license application plan and cost for licensing a repository at Yucca Mountain. This includes: a rationale for the technical work needed to complete the license application; a description of technical work plans for further site investigations, design and performance assessment analyses; and, a discussion of statutory, regulatory and support activities needed to complete a license application process. In addition, the costs and schedule to complete the work are described.

Volume 5 is a description of the costs to construct and operate a repository at Yucca Mountain. This volume includes discussion and tables on: cost elements; project phases; major assumptions; and an integrated cost summary.

An Overview will accompany the Viability Assessment. The Overview is intended to summarize the over 1,400 pages of material contained in the Viability Assessment in a less technical format.

All five volumes contain citations to references used to prepare the document. These references, or supporting documents, may be found through the following Internet address <http://www.ymp.gov/va.htm. Documents which are DOE products are available electronically on the Internet home page. Other reference documents are listed with information intended to assist researchers in finding the documents through a public library.

Based on the results of the Viability Assessment, the Department believes that scientific and technical work at Yucca Mountain should proceed. The Viability Assessment is not a decision on Yucca Mountain. It will, however, provide a road map for future work necessary to support a decision in 2001 on whether to recommend the site to the President for development as a repository.

Issued in Washington, D.C. December 21, 1998.

Lake H. Barrett,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 99–88 Filed 1–4–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy (DOE or Department) is forecasting the representative average unit costs of five residential energy sources for the year 1999. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene. The representative unit costs of these energy sources are used in the Energy Conservation Program for Consumer Products established by Part B of Title III of the Energy Policy and Conservation Act, 42 U.S.C. 6291–6309 (EPCA).

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective February 4, 1999 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

Dr. Barry P. Berlin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507

SUPPLEMENTARY INFORMATION: Section 323 of the EPCA (Act)[1] requires that DOE prescribe test procedures for the determination of the estimated annual operating costs or other measures of energy consumption for certain consumer products specified in the Act. These test procedures are found in 10 CFR Part 430, Subpart B.

Section 323(b) of the Act requires that the estimated annual operating costs of a covered product be computed from measurements of energy use in a representative average-use cycle and from representative average unit costs of energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these costs are used under the Federal Trade Commission's appliance labeling program, established by section 324 of the Act, and in connection with advertisements of appliance energy use and energy costs, which are covered by section 323(c) of the Act.

The Department last published representative average unit costs of residential energy for use in the Energy Conservation Program for Consumer Products Other Than Automobiles on December 8, 1997 (62 FR 64574). Effective February 4, 1999, the cost figures published on December 8, 1997, will be superseded by the cost figures set forth in this notice.

The Department's Energy Information Administration (EIA) has developed the 1999 representative average unit after-tax costs of electricity, natural gas, No. 2 heating oil, propane and kerosene prices found in this notice. The cost projections for heating oil, electricity, and natural gas are found in the fourth quarter, 1998, EIA *Short-Term Energy*

[1] References to the ''Act'' refer to the Energy Policy and Conservation Act, as amended. 42 U.S.C. §§ 6291–6309.

Outlook, DOE/EIA–0226 (98/4Q) and reflect the mid-price scenario. Projections for residential propane and kerosene prices are derived from their relative prices to that of heating oil, based on 1997 averages for these three fuels. The source for these price data is the September 1998 *Monthly Energy Review* (DOE/EIA–0035(97/09). The *Short-Term Energy Outlook* and the *Monthly Energy Review* are available at the National Energy Information Center, Forrestal Building, Room 1F–048, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–8800.

The 1999 representative average unit costs stated in Table 1 are provided pursuant to Section 323(b)(4) of the Act and will become effective February 4, 1999. They will remain in effect until further notice.

Issued in Washington, DC, on December 1, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES

[1999]

Type of energy	Per million Btu [1]	In commonly used terms	As required by test procedure
Electricity	$24.09	8.22¢/kWh [2 3]	$.0822/kWh
Natural gas	6.88	68.8¢/therm [4] or $7.07/MCF [5 6]	.00000688/Btu
No. 2 Heating Oil	6.42	89¢/gallon [7]	.00000642/Btu
Propane	8.43	77¢/gallon [8]	.00000843/Btu
Kerosene	7.70	$1.04/gallon [9]	.00000770/Btu

[1] Btu stands for British thermal units.
[2] kWh stands for kilowatt hour.
[3] 1 kWh=3,412 Btu.
[4] 1 therm=100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,027 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 99–89 Filed 1–4–99; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–113–000]

Algonquin LNG, Inc.; Notice of Application

December 29, 1998.

Take notice that on December 14, 1998, Algonquin LNG, Inc. (Algonquin LNG), 5400 Westheimer Court, Houston, Texas 77251–1642, filed in Docket No. CP99–113–000 an application pursuant to Section 7 of the Natural Gas Act, and the Commission's Rules and Regulations for a certificate of public convenience and necessity and abandonment authority in order to modernize its Providence, Rhode Island LNG Plant by the replacement and modification of various facilities in order to more efficiently provide its certificated services. The details of Algonquin LNG's proposal are more fully set forth in its application which is on file at the Commission and available for public inspection.

Specifically, Algonquin LNG seek authority to:

(1) Replace its existing low pressure vaporization system;

(2) Abandon the existing vaporization system and other related facilities;

(3) Construct, own and operate a boll-off handling system and ancillary facilities;

(4) Abandon its existing Rate Schedule X–4 service for The Providence Gas Company (Providence Gas);

(5) Enter into an agreement under which Providence Gas would provide firm displacement service for Algonquin LNG on behalf of Algonquin LNG's other customers;

(6) Modify Rate Schedule FST–LG to provide for an incremental reservation surcharge in order to recover the cost of the redelivery service across Providence Gas's system; and,

(7) Any other authorization which may be deemed necessary for implementation of the proposal contained herein.

To ensure an in-service date by the start of the 1999–2000 winter heating season, Algonquin LNG requested a final certificate by May 1, 1999.

Algonquin LNG included in its application long-term Rate Schedule FST–LG service agreements with Providence Gas, Boston Gas Company (Boston Gas) and Consolidated Edison Company of New York (ConEd) as follows:

Customer	Contract storage quantity (Dth)	Maximum daily withdrawal quantity (Dth/d)	Contract term
Providence Gas	600,000	95,000	10 years.
Boston Gas	1,159,664	35,000	8 years.
ConEd	500,000	20,000	10 years.
Totals	2,259,664	150,000	

Algonquin LNG states that all of the storage capacity of the Algonquin LNG Plant has been fully subscribed by the above customers.

Algonquin LNG proposes to enter into a single displacement agreement with

Providence Gas under which Algonquin LNG will transport customer vaporization volumes from the Algonquin LNG Plant to points of interconnection between Providence Gas and Algonquin LNG. In this manner firm and interruptible open access customers of Algonquin LNG will be able to obtain gas on the interstate pipeline grid with a single vaporization nomination to Algonquin LNG.

In order to provide for redelivery of vaporization and boil-off volumes to Boston Gas and ConEd, Algonquin LNG is proposing to obtain a displacement service from Providence Gas, with a daily contract quantity of 55,000 Dth of vaporization and 2,800 Dth of boil-off quantities and an annual contract quantity of 1,659,664 Dth/d. Providence Gas would charge Algonquin LNG a monthly demand charge of $69,153. Providence Gas will also charge an overrun charge of $0.25 per Dth for amounts displaced in excess of the annual contract quantities. Algonquin LNG in turn proposes to charge firm customers who elect displacement a reservation fee surcharge of $0.0417 per Dth per month based on their respective in-tank capacities and $0.25 per Dth for overruns in excess of the Contract Storage Quantity. Algonquin LNG's interruptible displacement customers will pay $0.50 per Dth vaporized which is a 100% load factor equivalent of the reservation surcharge.

The modifications proposed by Algonquin LNG are limited to the Algonquin LNG Plant site and involve the replacement of various Algonquin LNG Plant components and the addition of certain ancillary facilities. Algonquin LNG states that truck receipts into and deliveries from the Algonquin LNG Plant would not change.

Algonquin LNG proposes to add additional equipment and to replace existing equipment at the Plant. The new facilities include a vaporization system with a slight increase in deliverability, replacement of the existing boil off system and certain improvements to the control and monitoring facilities. Algonquin LNG states that except for the increased capability of the new vaporization system, most of the new facilities represent needed updates or normal additions to the plant. Algonquin LNG intends to rebuild the existing LNG pumps, but in the alternative, it will replace them if it should be determined after inspection of the pump internals that replacement is more economical than rebuilding. Two of the three new LNG vaporizers proposed will replace the capacity of the existing three units.

Providence Gas has provided and been responsible for boil off handling facilities. Under the proposed project, Algonquin LNG will assume responsibility for the boil off handling system and will install new piping, heat exchangers, compressors and a standby emergency generator on the Algonquin LNG Plant site. With the exception of the change in responsibility, this is simply a replacement of the existing boil off system.

The majority of the remaining proposed facilities are replacements for existing control and monitoring systems that are designed to improve and update the control and monitoring capabilities at the Algonquin LNG Plant. Algonquin LNG proposes to replace the existing vaporizers and portions of the cryogenic piping downstream of the LNG pumps and will remove that equipment from the site. No changes to the storage tank capacity or facilities supporting trucking activity are proposed. To ensure continued reliability Algonquin LNG intends to conduct a thorough external inspection of the tank and perform any necessary maintenance. Only limited non-jurisdictional facility changes will be required by Providence Gas as a result of the proposals included herein. Providence Gas will be required to make certain modifications to its existing Allen Avenue plant regulator station. In addition, Providence Gas plans to retire its boil off compressors and certain structures.

All of these facilities are located on Providence Gas's land adjacent to the Algonquin LNG Plant. Algonquin LNG states that its existing land lease for the Algonquin LNG Plant site, effective October 1, 1971, terminates on its own terms by September 30, 2001. A new land lease agreement is being negotiated which would become effective with the proposed in-service date of November 1, 1999, and would provide for a term of twenty years and an option by Algonquin LNG to extend the land lease for an additional ten years. The new land lease will require Algonquin LNG to provide monthly payments to Providence Gas of $20,000 through the term of the lease. In connection with the termination and renegotiation of the various agreements with Providence Gas, Algonquin LNG states it has agreed to pay Providence Gas a one-time payment of $2.6 million, in addition to the lease payment and reservation fees agreed upon by the parties.

Algonquin LNG proposes to provide service utilizing the new and existing facilities under its existing open-access service Rate Schedules FST–LG and IST–LG of its First Revised Volume No. I Tariff. Algonquin LNG proposes certain tariff provisions to effectuate the new services. Algonquin LNG states that it intends, in any future Algonquin LNG rate proceeding, that the cost of the proposed facilities would be included in Algonquin LNG's total rate base.

Algonquin LNG states that the environmental impact of the proposed project will be minimal. All of the construction will take place within a site that has been dedicated to industrial use for over a century. The continuing impacts of the operation of the Algonquin LNG Plant would be little affected by the proposed Algonquin LNG Plant modifications. Most pumps, compressors and the emergency generator will be housed in buildings that will mitigate noise impacts.

Any person desiring to be heard or making any protest with reference to said application should on or before January 19, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other 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 serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 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 such 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 Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Algonquin LNG to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–60 Filed 1–4–99; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–124–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

December 29, 1998.

Take notice that on December 18, 1998, Tennessee Gas Pipeline Company (Tennessee), Post Office Box 2511, Houston, Texas 77252, filed in Docket No. CP99–124–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install two twelve-inch taps, electronic gas measurement, communications equipment, approximately seventy feet of twelve-inch interconnecting pipeline and appurtenances to establish a delivery point Caledonia Power L.L.C., an electric power generator, located in Lowndes County, Mississippi. Tennessee makes such request under its blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

Tennessee proposes to install the delivery point on its existing system, near Milepost 546–1+14.3 and 546–2+14.3 in Lowndes County to satisfy Caledonia's request for natural gas service. Tennessee proposes to provide a combination of firm and interruptible transportation service to the shipper or shippers serving Caledonia. It is indicated that such services will be provided pursuant to Tennessee's Order 436 blanket transportation certificate issued in Docket No. CP87–115–000 and Tennessee's Rate Schedules IT and FT–A. Tennessee avers that the volumes to be delivered at this delivery point will be within the shipper or shippers contract quantity and therefore within the certificated entitlements for each shipper. It is stated that Tennessee intends to deliver up to 135,000 Mcf (approximately 137,030 dekatherms) per day of natural gas to Caledonia.

It is averred that Caledonia will own the interconnecting pipeline and measurement equipment, and that Caledonia will reimburse Tennessee for the cost of constructing this meter station which is estimated to cost approximately $981,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–61 Filed 1–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–125–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

December 29, 1998.

Take notice that on December 18, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new metering facility for use in measuring natural gas deliveries to an LDC, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Williston Basin would install a new meter within the confines of an existing building at the Border Station in Big Horn County, Wyoming, to measure gas deliveries prior to such gas entering Montana-Dakota Utilities Company's (Montana-Dakota) distribution system. Montana-Dakota serves Phoenix Production (Phoenix) with natural gas to fuel Phoenix's oil treaters and separators in the Torchlight Field in Big Horn County. The new meter station would eliminate the possibility of unmeasured and unbilled gas losses through Montana-Dakota's distribution line.

The estimated cost for the installation of the meter proposed is $660.00. Williston Basin does not anticipate that the addition of the proposed facility would have any significant effect on its peak day or annual requirements and capacity. Williston Basin also states that the volumes to be delivered are within the contractual entitlements of the customer.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request

shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–62 Filed 1–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–81–000, et al.]

Indiantown Cogeneration, L.P., et al.; Electric Rate and Corporate Regulation Filings

December 23, 1998.

Take notice that the following filings have been made with the Commission:

1. Indiantown Cogeneration, L.P.

[Docket No. EG98–81–000]

On December 15, 1998, Indiantown Cogeneration, L.P. (Indiantown) filed a notice of change in facts to reflect a certain departure from the facts the Commission relied upon in granting exempt wholesale generator status to Indiantown.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. The United Illuminating Company Wisvest-Connecticut, LLC Fitchburg Gas and Electric Light Company

[Docket Nos. EC99–17–000 and ER99–977–000]

Take notice that on December 21, 1998, the United Illuminating Company (United Illuminating), Wisvest-Connecticut, LLC (Wisvest-Connecticut) and Fitchburg Gas and Electric Light Company (Fitchburg) (the Applicants) jointly and/or individually submitted for filing, pursuant to Sections 203 and 205 of the Federal Power Act, and Parts 33 and 35 of the Commission's regulations, applications and rate schedules in connection with the divestiture by United Illuminating of substantially all of its fossil electric generation assets by sale to Wisvest-Connecticut, all pursuant to a series of agreements dated October 2, 1998. In addition, Fitchburg seeks approval of the transfer to United Illuminating, for sale to Wisvest-Connecticut, of Fitchburg's 4.5% interest in the New Haven Harbor Station, one of the electric generation assets that United Illuminating is divesting.

In addition to approval of the disposition of the transmission facilities associated with the divestiture of the generation assets, United Illuminating and Wisvest-Connecticut seek approval for United Illuminating's assignment of certain wholesale power sales agreements to Wisvest-Connecticut. Certain Applicants further filed the following agreements: (1) a Power Supply Agreement pursuant to which Wisvest-Connecticut will supply wholesale transition service and related ancillary services to United Illuminating; (2) a Purchased Power Agreement pursuant to which United Illuminating will transfer the output associated with its interest in the fossil generation assets to Wisvest-Connecticut in the event the divestiture transaction does not close by 12:01 a.m., April 1, 1999; and (3) an Interconnection Agreement providing for the interconnection of the generating facilities and for various physical arrangements at the sites in question.

Copies of the entire filing have been served on the regulatory agencies in the State of Connecticut, Commonwealth of Massachusetts and State of New Hampshire.

Comment date: January 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Gauley River Power Partners, L.P.

[Docket No. EG99–17–000]

Take notice that on December 3, 1998, Gauley River Power Partners, L.P. filed a Notice of Withdrawal of Application for Determination of Exempt wholesale Generator Status.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. PDC-El Paso Milford LLC

[Docket No. EG99–29–000]

Take notice that on November 24, 1998, PDC-El Paso Milford LLC (the Applicant) filed an application for status as an exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant will construct and own an eligible generating facility (a natural gas-fired electric generation facility, including ancillary and appurtenant structures, with a nominal average annual output of 544-MW) to be located on a site in the City of Milford, Connecticut.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. CH Resources, Inc.

[Docket No. EG99–30–000]

Take notice that on December 7, 1998, CH Resources, Inc. (Resources) filed an Application for Determination of Exempt Wholesale Generator Status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, all as more fully explained in the Application.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Gauley River Power Partners, L.P.

[Docket No. EG99–31–000]

Take notice that on December 8, 1998, Gauley River Power Partners, L.P. (GRPP) filed an application for determination of exempt wholesale generator status pursuant to Section 365 of the Commission's regulations.

GRPP, a Vermont limited partnership, is an indirect wholly-owned subsidiary of Catamount Energy Corporation, which in turn is a wholly-owned subsidiary of Central Vermont Public Service Corp., both Vermont corporations.

GRPP will operate, indirectly through a Catamount Operations, Inc., an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Act of 1935, a hydroelectric project with an installed nameplate capacity of 80 MW to be located on the Gauley River in Nicholas County, West Virginia and owned by the City of Summersville, West Virginia. The Facility consists of one penstock, 17 feet in diameter, connected to the existing outlet of one Howell-Bunger valve conduit of the Army Corps of Engineers' Summersville Dam, a powerhouse containing two 40 MW Francis hydraulic turbines; a valve house with one Howell-Bunger valve, and a trailrace. The Facility will also include a step-up transformer, associated breakers and metering equipment and an approximately 10-mile-long 69 kV transmission line that is required to connect the Facility to the transmission system of the Appalachian Power Company.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Catamount Operations, Inc.

[Docket No. EG99–32–000]

Take notice that on December 8, 1998, Catamount Operations, Inc. (COI) filed an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

COI, a Vermont corporation, is owned by Catamount Energy Corporation, a Vermont corporation, and Gauley River Power Partners, L.P., a Vermont limited partnership and indirect wholly-owned subsidiary of Catamount Energy Corporation. Catamount Energy Corporation is a wholly-owned subsidiary of Central Vermont Public Service Corp., also a Vermont corporation.

COI will operate a hydroelectric project with an installed nameplate capacity of 80 MW to be located on the Gauley River in Nicholas County, West Virginia and owned by the City of Summersville, West Virginia. The Facility consists of one penstock, 17 feet in diameter, connected to the existing outlet of one Howell-Bunger valve conduit of the Army Corps of Engineers' Summersville Dam; a powerhouse containing two 40 MW Francis hydraulic turbines; a valve house with one Howell-burger valve; and a tailrace. The Facility will also include a step-up transformer, associated breakers and metering equipment and an approximately 10-mile-long 69 kV transmission line that is required to connect the Facility to the transmission system of the Appalachian Power Company.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. Energy East South Glens Falls, LLC

[Docket No. EG99–33–000]

On December 8, 1998, Energy East South Glens Falls, LLC, (applicant) having an address at 2 Court Street, Binghamton, New York 13901, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The applicant is a limited liability company that will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, an eligible facility in South Glens Falls, New York. The facility will consist of a 60–MW, combined-cycle cogenerating facility fueled primarily by natural gas. The facility will include such interconnection components as are necessary to interconnect the facility with Niagara Mohawk Power Corporation.

Comment date: December 31, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. FPL Energy Maine Hydro LLC

[Docket No. EG99–35–000]

Take notice that on December 11, 1998, FPL Energy Maine Hydro LLC of 700 Universe Blvd., Juno Beach, Florida 33408, filed with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

FPL Energy Maine Hydro LLC, a Delaware limited liability company, proposes to acquire, own and operate 21 licensed hydroelectric projects, one exempt hydroelectric project, and seven storage projects located in the State of Maine and to sell electric energy at wholesale. The facilities are currently owned by Central Maine Power Company and its affiliates. The Maine Public Utilities Commission has issued an order finding that allowing the facilities to be eligible facilities will benefit consumers, is in the public interest and does not violate state law (*Central Maine Power Company, Docket No. 98–058, November 25, 1998*).

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

10. FPL Energy Mason LLC

[Docket No. EG99–36–000]

Take notice that on December 11, 1998, FPL Energy Mason LLC of 700 Universe Blvd., Juno Beach, Florida 33408, filed with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

FPL Energy Mason LLC, a Delaware limited liability company, proposed to own and operate the Mason Station, consisting of five oil-fired steam units in Wiscasset, Maine. The units currently are owned by Central Maine Power Company. The Maine Public Utilities Commission has found that allowing these facilities to be eligible facilities will benefit consumers, is in the public interest and does not violate state law (*Central Maine Power Company,* Docket No. 98–058, November 25, 1998).

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

11. FPL Energy Wyman LLC

[Docket No. EG99–37–000]

Take notice that on December 11, 1998, FPL Energy Wyman LLC of 700 Universe Blvd., Juno Beach, Florida 33408, filed with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

FPL Energy Wyman LLC, a Delaware limited liability company, proposed to own and operate the W.F. Wyman Station Units 1, 2 and 3 located in Yarmouth, Maine. The units are currently owned by Central Maine Power Company. The Maine Public Utilities Commission has found that allowing these facilities to be eligible facilities will benefit consumers, in the public interest and does not violate state law (*Central Maine Power Company,* Docket No. 98–058, November 25, 1998.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

12. FPL Energy Wyman IV LLC

[Docket No. EG99–38–000]

Take notice that on December 11, 1998, FPL Energy Wyman IV LLC of 700 Universe Blvd., Juno Beach, Florida 33408, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

FPL Energy Wyman IV LLC is a Delaware limited liability company and proposed to acquire a 59.1547 percentage interest in the W.F. Wyman Unit 4 generating facility located in Yarmouth, Maine. The interest is currently owned by Central Maine Power Company. The Maine Public Utilities Commission has found that allowing the facility to be an eligible facility will benefit consumers, is in the public interest and does not violate state law (*Central Maine Power Company,* Docket No. 98–058, November 25, 1998.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

13. FPL Energy AVEC LLC

[Docket No. EG99–39–000]

Take notice that on December 11, 1998, FPL Energy AVEC LLC of 700 Universe Blvd., Juno Beach, Florida 33408, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

FPL Energy AVEC LLC, a Delaware limited liability company, proposes to indirectly own and operate a 31 MW biomass facility located in Fort Fairfield, Maine through the purchase of all of the outstanding common stock of the Aroostook Valley Electric Company. The Aroostook Valley Electric Company is currently owned by Central Maine Power Company. The Maine Public Utilities Commission has found that allowing the biomass generating facility to be an eligible facility will benefit consumers, is in the public interest and does not violate state law (*Central Maine Power Company,* Docket No. 98–058, November 25, 1998.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

14. Aroostook Valley Electric Company

[Docket No. EG99–40–000]

Take notice that on December 14, 1998, Aroostook Valley Electric Company (AVEC), 83 Edison Drive, Augusta, Maine 04336 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

AVEC is a Maine corporation and a subsidiary of Central Maine Power Company which owns and operates a 31 MW wood-fired generating facility located in Fort Fairfield, Maine. AVEC will become a wholly-owned subsidiary of FPL Energy AVEC LLC and sell electric energy exclusively at wholesale. The Maine Public Utilities Commission has found that allowing the biomass generating facility to be an eligible facility will benefit consumers, is in the public interest and does not violate state law. *Central Maine Power Company,* Docket No. 90–058, Nov. 25, 1998.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

15. PSEG PPN Energy Company Ltd.

[Docket No. EG99–41–000]

Take notice that on December 14, 1998, PSEG PPN Energy Company Ltd. (PSEG PPN), with its principal office at 608 St. James Court, St. Denis Street, Port Louis, Mauritius filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PSEG PPN is a company organized under the laws of Mauritius. PSEG PPN will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating a gas and/or naphtha-fired combined cycle generating facility consisting of one electric generating unit with a nameplate rating of approximately 347 megawatts and incidental facilities located in Tamil Nadu, India; selling electric energy at wholesale and engaging in project development activities with respect thereto.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

16. Morgan Generation Company LLC, Brush Generation Company LLC

[Docket No. EG99–42–000]

On December 15, 1998, Morgan Generation Company LLC, (Morgan), 1001 Louisiana Street, Houston, Texas 77002, and Brush Generation Company LLC (Brush), 1001 Louisiana Street, Houston, Texas 77002 (collectively Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Morgan intends to acquire 99 percent of the partnership interests in Colorado Power Partners (CPP), a Colorado general partnership which owns the Brush 1 cogeneration facility located in Brush, Colorado. The remaining one percent interest will be acquired by Brush. Upon acquisition of the interests in CPP by Morgan and Brush, the Brush 1 facility will be engaged exclusively in the generation of electric energy for sale at wholesale. The Brush 1 facility is a topping cycle cogeneration facility consisting of two 25 megawatt (MW) gas turbines, a heat recovery steam generator, a 30 MW extraction-condensing steam turbine, a waste-heat steam boiler, a steam-heat exchanger and waste-heat hot water boilers. Upon acquisition of the interests in CPP by Applicants, the Brush 1 Facility will be operated by Colorado Cogen Operators Limited Liability Company pursuant to an operation and maintenance agreement.

No rate or charge for, or in connection with, the construction of the Brush 1 facility, or for electric energy produced thereby (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge), was in effect under the laws of any State of the United States on October 24, 1992. Copies of this application have been served upon the Public Service Company of Colorado and the Securities and Exchange Commission.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

17. CH Resources, Inc.

[Docket No. EG99–43–000]

Take notice that on December 16, 1998, CH Resources, Inc. (Resources) filed an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's rules as more fully explained in the Application.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

18. Indeck Energy Services of Olean, Inc.

[Docket No. EG99–44–000]

On December 18, 1998, Indeck Energy Services of Olean, Inc. (Indeck Energy), 600 North Buffalo Grove Road, Suite 300, Buffalo Grove, Illinois 60089, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Indeck Energy is a single purpose entity incorporated under the laws of the State of Illinois. Indeck Energy will be engaged exclusively in the business of operating a 79 MW eligible facility located in Olean, New York, and selling electric energy at wholesale, as these terms are defined by the Federal Energy Regulatory Commission.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration

of comments to those that concern the adequacy or accuracy of the application.

19. Indeck-Olean Limited Partnership

[Docket No. EG99–45–000]

On December 18, 1998, Indeck-Olean Limited Partnership (Indeck-Olean), 600 North Buffalo Grove Road, Suite 300, Buffalo Grove, Illinois 60089, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Indeck-Olean is a Delaware limited partnership that owns a 79 MW generation facility located in Olean, New York. Indeck-Olean is engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

20. Saba Power Company (Private) Limited

[Docket No. EG99–46–000]

On December 21, 1998, Saba Power Company (Private) Limited, (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant, a Pakistan limited liability corporation intends to own certain generating facilities in Pakistan. These facilities will consist of a 124.7 MW oil fired thermal electric generating facility located near Farouqabad, Pakistan.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

21. Tipitapa Power Company Ltd.

[Docket No. EG99–47–000]

On December 21, 1998, Tipitapa Power Company Ltd. (Applicant), West Wind Building, P.O. Box 1111, Grand Cayman, Cayman Islands, B.W.I., filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant, a Cayman Islands Corporation, intends to build and own certain power generating facilities in Nicaragua. These facilities will consist of a 50.9 MW fuel oil fired power plant near Managua, Nicaragua.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

22. RockGen Energy LLC

[Docket No. EG99–48–000]

On December 21, 1998, RockGen Energy LLC (Applicant), with its principal office at c/o SkyGen Energy LLC, Edens Corporate Center, 650 Dundee Road, Suite 350, Northbrook, Illinois 60062, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it will be engaged in owning and operating the RockGen Energy Center consisting of an approximately 525 MW natural gas-fired simple-cycle generation facility which will be constructed in either Johnstown or Christiana Township, Wisconsin. The Applicant also states that it will sell electric energy exclusively at wholesale.

Comment date: January 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

23. Minnesota Power, Inc., Petitioner, v. Northern States Power Company, Respondent

[Docket No. EL99–20–000]

Take notice that Minnesota Power, Inc. (Minnesota Power) on December 21, 1998, tendered for filing pursuant to Rules 206 and 209 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and 385.209, and Sections 202, 205, 206, and 306 of the Federal Power Act, 16 U.S.C. §§ 824a, 824d, 824e, 825e, a Complaint and Motion To Show Cause against Northern States Power Company (N.P.).

A copy of this document has been served on NSP.

Minnesota Power is asking the FERC to enforce a FERC-approved settlement agreement by requiring NSP to join the Midwest ISO, or, in the alternative, requiring NSP to adopt the Midwest ISO tariff, or a MAPP regional tariff should one be approved. Additionally, Minnesota Power is requesting the Commission issue an Order to Show Cause instructing that any NSP Independent Transmission Company (ITC) must be developed in compliance with the Commission's ISO principles. Finally, Minnesota Power asks the Commission to revoke NSP's market based rate authority pending its participation in the Midwest ISO.

Comment date: January 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Ocean State Power & Ocean State Power II

[Docket Nos. ER95–530–003, ER95–533–000, ER97–1890–002, ER97–1899–000]

Take notice that on December 18, 1998, Ocean State Power and Ocean State Power II (Ocean State), tendered for filing revised tariff sheets that reflect the settlement rates in the above referenced dockets.

Comment date: January 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Ocean State Power & Ocean State Power II

[Docket Nos. ER95–530–004, ER95–533–000, ER97–1890–000, ER97–1899–000, ER98–1717–000, ER98–1718–000]

Take notice that on December 18, 1998, Ocean State Power and Ocean State Power II (Ocean State), tendered for filing its refund compliance report in the above-referenced dockets.

Comment date: January 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Florida Power Corporation

[Docket No. ER97–4573–002]

Take notice that on December 16, 1998, Florida Power Corporation tendered for filing a refund report in compliance with the Commission's November 2, 1998, order approving the Settlement Agreement in Docket No. ER97–4573–000.

Florida Power states that copies of its refund report have been served on all affected customers and interested state commissions.

Comment date: January 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Carolina Power & Light Company

[Docket No. ER99–950–000]

Take notice that on December 18, 1998, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Short-Term Firm Point-to-Point Transmission Service with Sonat Power Marketing L.P.; SCANA Energy Marketing, Inc., and Philadelphia Electric Company. Service to these Eligible Customers will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of July 17, 1997, for the agreement with Sonat; an effective date of March 23, 1998, for the agreement with SCANA; and a date of May 26, 1998, for the agreement with Philadelphia.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: January 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Carolina Power & Light Company

[Docket No. ER99–951–000]

Take notice that on December 18, 1998, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with Tennessee Valley Authority under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: January 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Western Resources, Inc.

[Docket No. ER99–952–000]

Take notice that on December 18, 1998, Western Resources, Inc. (Western Resources), tendered for filing agreements between Western Resources and Constellation Power Source Inc. Western Resources states that the purpose of the agreement is to permit the customer to take service under Western Resources' market-based power sales tariff on file with the Commission.

The agreement is proposed to become effective November 23, 1998.

Copies of the filing were served upon Constellation Power Source Inc., and the Kansas Corporation Commission.

Comment date: January 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. PacifiCorp

[Docket No. ER99–953–000]

Take notice that on December 18, 1998, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the annual facilities charge calculation under, PacifiCorp Rate Schedule FERC No. 298.

PacifiCorp requests that an effective date of December 31, 1998, be assigned to the annual facilities charge calculation.

Copies of this filing were supplied to Southern California Edison Company, Pacific Gas & Electric Company, the Washington Utilities and Transportation Commission, the Public Utility Commission of Oregon and the Public Utilities Commission of the State of California.

Comment date: January 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Allegheny Energy, Inc.

[Docket No. ER99–954–000]

Take notice that on December 18, 1998, AYP Energy, Inc. (AYP), tendered for filing its FERC Electric Rate Schedule No. 1, as an Amendment to its Market Rate Tariff to permit sales to its affiliated companies pursuant to the Commission's directives on affiliated sales.

AYP Energy, Inc., seeks a December 1, 1998, effective date for the amendment to its Market Rate Tariff.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. PJM Interconnection, L.L.C.

[Docket No. ER99–955–000]

Take notice that on December 18, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing two executed service agreements under the PJM Open Access Tariff.

The effective dates of these agreements is November 20, 1998, the date they were executed. PJM requests a waiver of the of the Commission's 60-day notice requirements.

Copies of this filing were served upon the parties to the service agreements.

Comment date: January 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. PJM Interconnection, L.L.C.

[Docket No. ER99–956–000]

Take notice that on December 18, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing a notice of cancellation of Rate Schedule Supplement No. 123, to Rate Schedule FERC No. 20. The cancellation of this rate schedule, effective February 28, 1999, will terminate PacifiCorp Power Marketing Inc.'s (PacifiCorp), membership in PJM.

PJM states that it served a copy of its filing on all of the members of PJM, including PacifiCorp, and each of the state electric regulatory commissions within the PJM control area.

Comment date: January 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Entergy Services, Inc.

[Docket No. ER99–957–000]

Take notice that on December 18, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and DePere Energy Marketing, Inc.

Comment date: January 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. Entergy Services, Inc.

[Docket No. ER99–958–000]

Take notice that on December 18, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-to-Point Transportation Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Illinois Power Company.

Entergy Services requests that the Service Agreement be made effective as a rate schedule no later than December 1, 1998.

Comment date: January 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. The Dayton Power and Light Company

[Docket No. ER99–959–000]

Take notice that on December 18, 1998, The Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing TransAlta Energy Marketing (U.S.) Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon TransAlta Energy Marketing (U.S.) Inc., and the Public Utilities Commission of Ohio.

Comment date: January 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. The Dayton Power and Light Company

[Docket No. ER99–960–000]

Take notice that on December 18, 1998, The Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing with TransAlta Energy Marketing (U.S.) Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon with TransAlta Energy Marketing (U.S.) Inc., and the Public Utilities Commission of Ohio.

Comment date: January 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–67 Filed 1–4–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–976–000, et al.]

PG&E Power Service Company, et al.; Electric Rate and Corporate Regulation Filings

December 24, 1998.

Take notice that the following filings have been made with the Commission:

1. PG&E Power Services Company

[Docket No. ER99–976–000]

Take notice that on December 21, 1998, PG&E Power Services Company (PGPS), tendered for filing notification that effective December 31, 1998, Rate Schedule FERC Nos. 1 through 7, and any supplements thereto, filed with the Federal Energy Regulatory Commission by PGPS are to be canceled.

PGPS requests waiver of the 60-day notice period to permit the notice of cancellation to take effect December 31, 1998.

Notice of the proposed cancellation has been served upon the affected purchasers.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of New Mexico

[Docket Nos. ER98–2862–000; ER98–3376–000]

Take notice that on December 21, 1998, Public Service Company of New Mexico (PNM), tendered for filing a response to the deficiency letter issued by the Director, Division of Rate Applications, Office of Electric Power Regulation on November 17, 1998, requesting additional information in the above referenced dockets.

PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Northern States Power Company (Minnesota) and (Wisconsin)

[Docket No. ER99–974–000]

Take notice that on December 21, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Firm Transmission Service Agreement between NSP and City of Medford, WI.

NSP requests that the Commission accept the agreement effective January 1, 1999, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company (Minnesota) and (Wisconsin)

[Docket No. ER99–975–000]

Take notice that on December 21, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and Southwestern Public Service.

NSP requests that the Commission accept both the agreements effective December 2, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–65 Filed 1–4–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–961–000, et al.]

Vastar Power Marketing, Inc., et al.; Electric Rate and Corporate Regulation Filings

December 22, 1998.

Take notice that the following filings have been made with the Commission:

1. Vastar Power Marketing, Inc.

[Docket No. ER99–961–000]

Take notice that on December 17, 1998, Vastar Power Marketing, Inc., tendered for filing a Motion to Reinstate FERC Electric Rate Schedule No. 1, in which it seeks the reinstatement, effective January 7, 1998, of the rate schedule authorizing it to engage in power sale transactions at market-based rates.

Comment date: January 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Tucson Electric Power Company

[Docket No. ER99–533–000]

Take notice that on December 17, 1998, Tucson Electric Power Company (Tucson), tendered for filing Notice of Withdrawal of revised Open Access Transmission Tariff, FERC Tariff No. 2, filed on November 6, 1998 in the above referenced docket.

Comment date: January 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Central Illinois Light Company Complainant, v. Central Illinois Public Service Company, Union Electric Company and Ameren Services Company; Respondents

[Docket No. EL99–17–000]

Take notice that on December 18, 1998, pursuant to Pursuant to Sections 205, 206, 306 and 309 of the Federal Power Act (16 U.S.C. §§ 824d, 824e, 825e and 825h), and Rules 206 and 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 and 207, Central Illinois Light Company (CILCO), a local distribution company and wholesale transmission, capacity and energy customer, tendered for filing a Complaint against its supplier Central Illinois Public Service Company (CIPS) and CIPS' affiliates and agents, Union Electric Company (UE) and Ameren Services Company (Ameren Services). CILCO stated that this is an action to enforce compliance with Interconnection Agreements and Service Agreements that are on file with the Commission and to remedy CIPS' past and ongoing breaches of these Agreements. CILCO stated that in knowing and purposeful violation of its contracts with CILCO and of its filed rates with this Commission, CIPS has failed to provide for, and indeed has resold for the benefit of its affiliated companies, energy from capacity that it had contracted to reserve for CILCO. CILCO also stated that CIPS and its affiliates UE and Ameren have (1) violated the filed rate doctrine; (2) failed to make capacity available to the customer who pays for and relies on it; (3) sold such capacity twice without customer consent or customer release of the capacity; (4) breached contracts on which the successful operation of a deregulated market depends; (5) contravened the ''Golden Rule'' by favoring an affiliate's use of energy ahead of customers with contractual rights to the energy; and (6) mocked the statutory filing requirements. CILCO has requested relief from the Commission.

Comment date: January 18, 1999, in accordance with Standard Paragraph E at the end of this notice. Answers to the Complaint are also due on or before January 18, 1999.

4. Boston Edison Company

[Docket No. ER99–757–000]

Take notice that on December 17, 1998, Boston Edison Company tendered for filing a short-term point-to-point umbrella service agreement with TransAlta Energy Marketing (U.S.) Inc., in compliance with a December 9, 1998, Commission letter requesting additional information.

Comment date: January 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. SE Holdings, L.L.C.

[Docket No. ER99–930–000]

Take notice that on December 16, 1998, SE Holdings L.L.C., of Pittsburgh, Pennsylvania tendered for filing a revised market based rate schedule for the sale of capacity and energy at wholesale pursuant to negotiated agreements.

Strategic Holdings, L.L.C., requests waiver of the Commission's Regulations such that the agreement can be made effective as of the date of Commission approval of a Section 203 Application being filed concurrently with the revised rate schedule.

Copies of the filing have been served upon the Pennsylvania Public Utilities Commission.

Comment date: January 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER99–937–000]

Take notice that December 17, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing that effective December 31, 1998, Contract No. 33 between Niagara Mohawk and the New York Power Authority to serve 4 MW of New York Power Authority power to Olin, effective May 23, 1997, filed with the Federal Energy Regulatory Commission by Niagara Mohawk is to be canceled.

Notice of the proposed cancellation has been served upon The New York Power Authority.

Comment date: January 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Peco Energy Company

[Docket No. ER99–938–000]

Take notice that on December 17, 1998, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated December 14, 1998 with Horizon Energy Company d/b/a Exelon Energy (EXELON) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of January 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to EXELON and to the Pennsylvania Public Utility Commission.

Comment date: January 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Peco Energy Company

[Docket No. ER99–939–000]

Take notice that on January 17, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, a Transaction Letter dated December 8, 1998 with Horizon Energy Company d/b/a Exelon Energy (EXELON) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of February 1, 1999, for the Transaction Letter.

PECO states that copies of this filing have been supplied to EXELON and to the Pennsylvania Public Utility Commission.

Comment date: January 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Central Maine Power Company

[Docket No. ER99–940–000]

Take notice that on December 17, 1998, Central Maine Power Company (CMP), tendered for filing an executed

service agreement for sale of capacity and/or energy entered into with Energy Atlantic, L.L.C. Service will be provided pursuant to CMP's Wholesale Market Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 4.

Comment date: January 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Peco Energy Company

[Docket No. ER99–941–000]

Take notice that on December 17, 1998, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, a Transaction Letter dated December 1, 1998 with Horizon Energy Company d/b/a Exelon Energy (EXELON), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of February 1, 1999, for the Transaction Letter.

PECO states that copies of this filing have been supplied to EXELON and to the Pennsylvania Public Utility Commission.

Comment date: January 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Central Maine Power Company

[Docket No. ER99–942–000]

Take notice that on December 17, 1998, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Select Energy Inc. Service will be provided pursuant to CMP's Wholesale Market Tariff, designated rate schedule CMP-FERC Electric Tariff, Original Volume No. 4.

CMP respectfully requests that the Commission accept the Service Agreement for filing and requests waiver of the Commission's notice requirement to permit service under the Agreement to begin effective as of December 1, 1998.

Comment date: January 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. The Washington Water Power Company

[Docket No. ER99–943–000]

Take notice that on December 17, 1998, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Short-Term Firm and Non-Firm Point-To-Point Transmission Service under WWP's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with Statoil Energy Trading Inc., and TransAlta Energy Marketing (U.S.) Inc.

WWP requests the Service Agreements be given respective effective dates of December 8, 1998 and November 19, 1998.

Comment date: January 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Sierra Pacific Power Company

[Docket No. ER99–945–000]

Take notice that on December 17, 1998, Sierra Pacific Power Company (Sierra Pacific), tendered for filing a partially executed Operating and Scheduling Agreement for the Alturas Intertie Project between Bonneville Power Company (Bonneville), PacifiCorp and Sierra Pacific, dated November 25, 1998. The agreement establishes criteria and procedures for operation of Alturas Intertie, a high voltage transmission line.

Sierra Pacific has requested a waiver of the sixty-day prior notice requirement so that the agreement may take effect on December 18, 1998.

Copies of the filing were served on the parties to the agreement and the relevant state commissions.

Comment date: January 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Duquesne Light Company

[Docket No. ER99–946–000]

Take notice that on December 17, 1998, Duquesne Light Company (DLC), tendered for filing a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 10, 1998, American Energy Solutions, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds American Energy Solutions, Inc., as a customer under the Tariff.

DLC requests an effective date of December 16, 1998, for the Service Agreement.

Comment date: January 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Duquesne Light Company

[Docket No. ER99–947–000]

Take notice that on December 17, 1998, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with Allegheny Power (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of December 16, 1998.

Copies of this filing were served upon Customer.

Comment date: January 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Duquesne Light Company

[Docket No. ER99–948–000]

Take notice that on December 17, 1998, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with El Paso Power Services Company (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of December 16, 1998.

Copies of this filing were served upon Customer.

Comment date: January 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Duquesne Light Company

[Docket No. ER99–949–000]

Take notice that on December 17, 1998, Duquesne Light Company (DLC), tendered for filing a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated December 16, 1998, Energy Cooperative Association of Pennsylvania under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Energy Cooperative Association of Pennsylvania as a customer under the Tariff.

DLC requests an effective date of December 16, 1998, for the Service Agreement.

Comment date: January 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–66 Filed 1–4–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

December 29, 1998.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Amendment of License.

b. *Project Nos:* 2534–017, 2666–008, 2712–012, 2721–014, and 2727–057.

c. *Date Filed:* November 19, 1998.

d. *Applicant:* Bangor Hydro-Electric Company.

e. *Name of Projects:* Milford; Medway; Stillwater; Howland; Ellsworth.

f. *Locations:* All in the State of Maine and the Milford Project is located on the Penobscot and Stillwater Rivers in Penobscot County; the Medway Project is located on the West Branch of the Penobscot River in the Town of Medway, Penobscot County; the Stillwater Project is located on Stillwater Branch of the Penobscot River in the city of Old Town, Penobscot County; the Howland Project is located at the mouth of the Piscataquis River, within the city limit of Howland, Penobscot County; and the Ellsworth Project is located on Union River, Hancock County.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Alan M. Spear, Bangor Hydro-Electric Company, 33 State Street, Bangor, Maine 04402, (207) 945–5621 and John A. Whittaker, IV, Winston & Strawn, 1400 L Street, NW, Washington, DC 20005, (202) 371–5766.

i. *FERC Contact:* J.W. Flint, (202) 219–2667.

j. *Comment Date:* February 16, 1999.

k. *Description of Amendment:* The purpose of the amendment is to correct descriptions of the project works and to delete certain facilities and lands from the licensed project.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR Sections 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST'' or ''MOTION TO INTERVENE,'' as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Motions to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant. The application may be viewed on the web site at www.ferc.fed.us. Call (202) 208–2222 for assistance.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–64 Filed 1–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–3760–000, EC96–19–000, and ER96–1663–000 (Not Consolidated)]

California Independent System Operator Corporation; Notice of Conference

December 29, 1998.

Take notice that a conference will be convened in the subject proceedings commencing Wednesday, January 6, 1999 at 9:30 A.M. EST and will continue on Thursday, January 7, 1999. The conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC. The purpose of the conference is to discuss the list of unresolved issues in preparation for the report to the Commission. *See* California Independent System Operator Corp., 84 FERC ¶ 61,217 (1998). Additionally, the parties will attempt to resolve some of those issues.

Any Party, as defined by 18 CFR 385.102(c) may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to Section 385.214 of the Commission's Regulations.

For additional information, please contact David Cain at (202) 208–0917 or david.cain@ferc.fed.us, or Bill Collins at (202) 208–0248 or william.collins@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–63 Filed 1–4–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6215–4]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) listed below is coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before March 8, 1999.

ADDRESSES: Office of Enforcement and Compliance Assurance, Office of Compliance, Mail Code 2224A, 401 M Street SW., Washington, DC 20406. Information may also be acquired electronically through the EnviroSense Bulletin Board, (703) 908–2090 or the EnviroSense WWW/Internet Address, http//wastenot.inel.gov./envirosense/. All responses and comments will be collected regularly from Enviroene. Interested persons may obtain a copy of the ICR without charge by calling Sandy Farmer of OPPE at (202) 260–2740.

FOR FURTHER INFORMATION CONTACT: Frank Coleman, telephone: (202) 564–5012; FAX: 202–564–0085; e-mail: *coleman.frank@epamail.epa.gov* for Notice of Arrival of Pesticides and Devices; Carol Buckingham, telephone: (202) 564–5008; FAX: (202) 564–0085; e-mail: *buckingham.carol@epamail.epa.gov* for Application for Registration of Pesticide-Producing Establishments, and Pesticide Report for Pesticide-Producing Establishments; Scott Throwe, telephone: (202) 564–7013; FAX: (202) 564–0050; e-mail: *throwe.scott@epamail.epa.gov* for NSPS Subpart EE, Metal Furniture Coating; Marcia Mia, telephone (202) 564–7042; FAX: (202) 564–0037; e-mail: *mia.marcia@epamail.epa.gov* for NSPS Subpart VV, VOC Equipment Leaks in the Synthetic Organic Chemical Industry; Jonathan Binder, telephone: (202) 564–2516; FAX: (202) 564–0009; e-mail: *binder.jonathan@epamail.epa.gov* for Solid Waste Landfills; Charles Williams, telephone: (202) 564–7016; FAX: (202) 564–0050; e-mail *williams.charles@epamail.epa.gov* for NSPS Subpart H, Sulfuric Acid Plants; Julie Tankersley, telephone: (202) 564–7002; FAX: (202) 564–0050; e-mail: *tankersley.julie@epamail.epa.gov* for NSPS Subpart XX, Bulk Gasoline Terminals; Scott Throwe, telephone: (202) 564–7013; FAX: (202) 564–0050; e-mail: *throwe.scott@epamail.epa.gov* for NESHAP Subpart N, Inorganic Arsenic Emissions from Glass Manufacturing; Scott Throwe, telephone: (202) 564–7013; FAX: (202) 564–0050; e-mail: *throwe.scott@epamail.epa.gov* and for NSPS Subpart CC, Glass Manufacturing Plants and Seth Heminway, telephone: (202) 564–7016; e-mail: *heminway.seth@epamail.epa.gov* for Wood Preservative-Exposure Levels in Wood Treatment Plants.

SUPPLEMENTARY INFORMATION:

Notice of Arrival of Pesticides and Devices

Affected Entities: This action affects entities which import pesticides or devices into the United States.

Title: Notice of Arrival of Pesticides and Devices (EPA Form 3540–1), OMB Number 2070–0020, EPA ICR Number 0152.06, Expiration Date: April 30, 1999.

Abstract: The U.S. Customs regulations at 19 CFR 12.112 require that an importer desiring to import pesticides into the United States shall, prior to the shipment's arrival, submit a Notice of Arrival of Pesticides and Devices (EPA Form 3540–1) to EPA who will determine the disposition of the shipment. After completing the form, EPA returns the form to the importer, or his agent, who must present the form to Customs upon arrival of the shipment at the port of entry. This is necessary to insure that EPA is notified of the arrival of pesticides and devices as required by the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) section 17(c).

Part I of the form requests identification and address information of the importer or his agent followed by information on the imported pesticide. The importer or his agent is entitled to make a confidentiality business information claim (CBI) on information submitted with the following exceptions: (1) the EPA registration number; (2) the producer establishment number; (3) the brand name of product; and (4) the major active ingredients including the percentage of each.

EPA regional personnel review the completed form for completeness and accuracy and to determine if the product should be released, denied entry, detained for inspection, or held intact by the consignee pending inspection. Part II is signed and the form is returned to the respondent with EPA instructions to the U.S. Customs Service as to the disposition of the shipment.

Upon the arrival of the shipment, the importer presents the EPA-approved NOA to the District Director of U.S. Customs at the port of entry. U.S. Customs compares entry documents for the shipment with the Notice of Arrival; it notifies the EPA Regional Office of any discrepancies between the NOA and the entry documents and per EPA's instruction either releases the shipment, denies entry, or detains the shipment for examination. If EPA inspects the shipment and it appears from examination of a sample that it is adulterated, or misbranded or otherwise violates the provisions of FIFRA, or is otherwise injurious to health or the environment, the pesticide or device may be refused admission. EPA resolves any discrepancies on the report with the importer or his agent.

The purpose of this reporting requirement is to ensure that the Agency is made aware of pesticides arriving in the customs territory of the United States. This information is necessary to ensure compliance with FIFRA and to identify the responsible party importing pesticides. If EPA did not collect this information, the Agency would be unable to meet the statutory requirements of FIFRA.

The information collected is used by EPA Regional pesticide enforcement and compliance staff and the Headquarters Office of Enforcement and Compliance Assurance and Office of Pesticide Programs. The U.S. Department of Agriculture, the Food and Drug Administration, and other Federal agencies may also make use of this information.

In the case of unregistered product imports between establishments operated by the same producer, the EPA is considering an establishment number for the importing registered establishment. This would be an addendum to the information collection request form. Under 40 CFR 152.30(a) unregistered pesticides may be imported between registered establishments operated by the same producer. EPA believes that this information request will not generate any significant burden to the respondents. The change will provide more useful information to the Agency so that it can determine whether certain pesticides may be imported and do so in a more timely way than is currently done.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The average annual reporting and recordkeeping burden is 2,100 hours. This is based on an estimated 7,000 respondents and 0.3 hours per respondent. The total

respondent cost of $75,369 is calculated using labor rates of $17.09 per hour plus 110% overhead or $35.89 from the United States Department of Commerce Bureau of Labor Statistics, March 1998, Table 2: Employment Costs for Civilian Workers by Occupational and Industry Group. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Application for Registration of Pesticide-Notification-Producing Establishments

Affected entities: This action affects domestic and foreign establishments who produce/manufacture pesticide products, active ingredients, or devices.

Title: Application for Registration of Pesticide-Producing Establishments (EPA Form 3540–8), Notification of Registration of Pesticide-Producing Establishments (EPA Form 3540–8(A), and Pesticide Report for Pesticide-Producing Establishments (EPA Form 3540–16). OMB Control Number 2070–0078, EPA ICR Number 0160.06, Expiration Date: April 30, 1999.

Abstract: The U.S. Environmental Protection Agency (EPA) must collect information on pesticide-producing establishments in order to meet the statutory requirements of section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The FIFRA requires producers of pesticide products, active ingredients, or devices to register their establishments with EPA and to submit an initial and, thereafter, annual report on the types and amounts of products produced.

Section 7(b) of FIFRA requires that any person who manufactures pesticides or active ingredients [or devices] subject to the Act must register the establishment in which the pesticide is produced with the Administrator of EPA. The EPA Form 3540–8, Application for Registration of Pesticide-Producing Establishments, is used to collect the establishment registration information required by this section. The EPA Form 3540–8(A), Notification of Registration of Pesticide-Producing Establishments, is used to notify the applicant of issuance of their EPA Establishment Registration Number(s) which is required for the facility(s) to produce, distribute and sell pesticides, active ingredients, or devices.

The FIFRA section 7(c)(1) requires that any producer operating an establishment registered under section 7 report to the Administrator 30 days after it is registered, and annually thereafter. Producers must report which types and amounts of pesticides, active ingredients, or devices are currently being produced, were produced during the past year, and were sold or distributed in the past year. The Code of Federal Regulations at 40 CFR 167 outlines the requirements for registration of pesticide-producing establishments and the schedule for submitting production information. The EPA Form 3540–16, Pesticide Report for Pesticide-Producing Establishments, is used to collect the pesticide production information required by section 7 of FIFRA.

The purpose of this reporting requirement is to obtain and maintain current pesticide production information, including the locations of all pesticide-producing establishments. This information provides an overview of establishments engaged in pesticide production activities and allows the Agency to target establishments for inspections with optimal utilization of limited inspection resources. Such production information permits EPA to trace ineffective, contaminated, or otherwise violative products to their source, and minimizes any adverse environmental impact that might arise from the production or distribution of violative products. In addition, the information is used by the Agency, the USDA, the FDA, and other Federal agencies for various other purposes, such as risk/benefit analysis.

This ICR renewal submission revises the current ICR by making minor modifications to the instructions for completion of/and the reporting forms for EPA Forms 3540–8, 3540–8(A), and 3540–16. The instruction revisions include wording changes of the instruction statements and a change to EPA Form 3540–16 from portrait format to a landscape format. These revisions to the instructions and form will not place any additional burden on the regulated community. Also, in addition to regular postal service annual mailings of the forms and instructions, they will also be made available on-line at: <http://es.epa.gov/oeca/datasys/sstsys.html> (do not include any capital letters in the address).

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology.

Burden Statement: The average annual burden to industry for the portion of this collection involving the registration of an establishment is estimated to be 30 minutes per response, including time for reviewing the instructions and completion of the necessary information on EPA Form 3540–8. There are an average 700 responses annually for a total burden of 350 hours.

The average annual burden to industry for the portion of this collection to report annual pesticide production information is estimated to be 1 hour and 33 minutes per response, including time for reviewing the instructions, planning activities, gathering and reviewing for accuracy, and storing or maintaining the information for completion of EPA Form 3540–16. There are an average 12,342 annual responses for a total burden of 18,590 hours.

There is no respondent burden associated with notification of the respondent of assignment of their establishment registration using EPA Form 3540–8(A).

The estimated number if establishments for this ICR is based on the fact that there are currently 12,342 establishments actively registered with EPA. This is not significantly different from the 12,336 establishments that were actively registered at the time of the last ICR renewal three years ago. The EPA does not expect any significant changes in the regulatory program or in the industry that would change the number of producing establishments during the next three years.

Therefore, EPA believes that the current tally of registered establishments is a reliable estimate of the number of respondents for the next three years. These estimates include the time necessary to review instructions, develop, acquire, install and utilize technologies and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Please send comments regarding these matters, or any aspect of the information collection, including suggestions for reducing the burden, to the address listed in the Address section of this document.

NSPS Subpart EE, Metal Furniture Coating

Affected entities: Entities potentially affected by this action are each metal furniture surface coating operation in which organic coatings are applied and for which construction, modification or reconstruction commenced after the date of proposal, November 28, 1980. A surface coating operation includes the coating application station(s), flash-off area, and curing oven.

Title: New Source Performance Standard for Metal Furniture Surface Coating, 40 CFR part 60, subpart EE, OMB Control Number 2060–1006, EPA ICR Number 0649.06, Expiration date: April 30, 1999.

Abstract: In the Administrator's judgment, VOC emissions from the metal furniture surface coating industry cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, the NSPS were promulgated for this source category.

Owners/operators of affected facilities must report excess emissions and deviations in operating parameters on a quarterly basis. Where no exceedances have occurred during a particular quarter, a report stating this shall be submitted semi-annually. Notification of construction and startup indicates to enforcement personnel when a new affected facility has been constructed and therefore is subject to the standards. The information generated by the monitoring, record keeping and reporting requirements described above is used by the Agency to ensure facilities affected by the NSPS continue to operate the control equipment used to achieve compliance with the NSPS.

Approximately 705 sources are currently subject to the standards. Volatile Organic Compounds (VOC's) are the pollutants regulated under this Subpart. The respondents are owners or operators of metal furniture surface coating operations. The control of VOC emissions from metal furniture surface coating operations requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. VOC emissions from the coating of metal furniture surfaces result from the application and curing or drying of organic coatings on the surface of each metal furniture part or product. These standards rely on the reduction of VOC emissions through either a capture system and incinerator or a capture system and solvent recovery system.

Owners and operators of the affected facilities described must make the following one-time only reports: initial notification and notification of the initial performance test. Performance test are needed as these are the Agency's record of a source's initial capability to comply with the emission standards, and note the operating conditions applicable to NSPS Subpart EE, Metal Furniture Coating, under which compliance was achieved.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shut down, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general of all sources subject to NSPS.

Information is recorded in sufficient detail to enable owners or operators to demonstrate compliance with the standards. This information is used to monitor effective operation of the capture system and control devices; thus, ensuring continuous compliance with the standards. The semiannual reporting requirement for no exceedances of the monitoring parameters provides a good indication of a source's compliance status.

In order to ensure compliance with the standards promulgated to protect public health, adequate record keeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Recordkeeping and reporting are mandatory under the regulation. Records must be maintained for 2 years. The information collected from record keeping and reporting requirements is also used for targeting inspections, and is of sufficient quality to be used as evidence in court.

Approximately 705 affected facilities under Subpart EE, must comply with 40 CFR, Part 60 General Provisions recordkeeping and reporting requirements including: Owners/operators of affected facilities must report excess emissions and deviations in operating parameters on a quarterly basis. Where no exceedances have occurred during a particular quarter, a report stating this shall be submitted semi-annually.

Notification of construction and startup indicates to enforcement personnel when a new affected facility has been constructed and, therefore, is subject to the standards. The information generated by the monitoring, recordkeeping and reporting requirements described above is used by the Agency to ensure facilities affected by the NSPS continue to operate the control equipment used to maintain regulatory compliance with the NSPS Subpart EE.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The individual burdens for each of the recordkeeping and reporting requirements applicable to the industry are consistent with the concept of burden under the Paperwork Reduction Act. The only type of industry costs associated with the information collection activity in the standards are labor costs. The labor estimates in the table were derived from

the United States Department of Labor Statistics, March 1988, Table 2: Employment Cost for Civilian Workers by Occupational and Industry Group. The average annual burden to industry over the next three years from these recordkeeping and reporting requirements is estimated at 128,213 person-hours. The respondent costs have been calculated on the basis of $17.09 per hour plus 110 percent overhead. The average annual burden to industry over the next three years of the ICR is estimated to be $4,601,565. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart VV, VOC Equipment Leaks in Synthetic Organic Chemical Industry

Affected Entities: Entities potentially affected by this action are those which are subject to subpart VV, Volatile Organic Compound (VOC) Equipment Leaks in the Synthetic Organic Chemicals Manufacturing Industry (SOCMI) with the exceptions listed in 40 CFR 60.480(d)

Title: NSPS subpart VV, VOC Equipment Leaks in the SOCMI, OMB Number 2060-0012, EPA ICR Number 0662.05, Expiration Date: September 30, 1998.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR 60.480, subpart VV, VOC Equipment Leaks in the SOCMI. This information is used by the Agency to identify sources subject to the standards and to insure that the best demonstrated technology is being properly applied. The standards require periodic recordkeeping to document process information relating to the source's ability to identify and eliminate leaking equipment. The standards apply to specific pieces of equipment contained within a process unit in the SOCMI, including pumps in light liquid service, compressors, pressure relief devices in gas/vapor, light or heavy liquid service, sampling connection systems, open-ended valves or lines, valves in gas/vapor and light liquid service, pumps and valves in heavy liquid service, and flanges and other connectors.

In the Administrator's judgement, VOC emissions from equipment leaks in the SOCMI cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, New Source Performance Standards have been promulgated for this source category as required under section 111 of the Clean Air Act.

The owners or operators of the affected facilities described must make one time only reports: notification of the date of construction or reconstruction, notification of the anticipated and actual date of startup, notification of any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which the standard applies (in this case, VOC), notification of the initial performance test, and the results of the performance test. The only regular reports required by this Subpart are a semiannual excess emissions summary.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility or malfunctions of the air pollution control device. These notifications, reports and records are required, in general of all sources subject to the NSPS.

In order to ensure compliance with standards promulgated to protect public health, adequate recordkeeping and reporting is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. The information collected from recordkeeping and reporting requirements is also used for targeting inspections, and is of sufficient quality to be used as evidence in court. Recordkeeping and reporting are mandatory under this regulation. Records must be maintained for 2 years.

Recordkeeping requirements specific to equipment leaks in the SOCMI support the facility's leak detection and repair program and include identification of leaking equipment; a log of leaking equipment; a log of information relating to the closed vent systems and control devices; a log identifying all equipment subject to the standard; a log of valves designated as difficult to monitor or unsafe to monitor; a log of valves complying with skip period leak detection and repair alternative standard; a log of criterion established which indicates a failure of the seal system, barrier system, or both for each barrier fluid system; dates of compliance tests and results; and for determining exemptions, an analysis of design capacity of affected sources or demonstration that the equipment is not in VOC service, and a statement listing the feed or raw materials and products.

Reporting requirements specific to equipment leaks in the SOCMI consist of an initial semiannual report including process unit identification and number of valves, pumps and compressors subject to the standards. All semiannual reports are to include process unit identification, number of components leaking and not repaired, dates of process unit shutdowns, and revisions to items submitted in the initial semiannual report. The source is also required to notify the Administrator of the election to use an alternative standard for valves ninety days before implementing the provision.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Additionally, the Agency would like to solicit comment on the estimate of the percentage of facilities employing contractors to perform their leak detection and repair programs and the costs per component of such contracted services; as well as the estimated growth of the number of facilities subject to the standard over the next three year period.

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved ICR. Where appropriate, the Agency identified

specific tasks and made assumptions, while being consistent with the concept of burden under Paper Work Reduction Act.

The estimate was based on the assumption that there would be 281 new affected facilities each year and that there would be an annual average of 3227 affected facilities over each of the next three years covered by the ICR. For the new sources, it was estimated that it would take: 281 person hours to read the instructions, 16,176 person hours to conduct the initial performance tests (assuming that 20% of the tests must be repeated), and 2360 person hours to gather the information and write the initial reports. For all sources, it was estimated that it would take 25,816 person hours to fill out semiannual reports and 258,160 person hours to enter information for records of operating parameters.

The annual burden to industry for the three year period covered by this ICR from recordkeeping and reporting requirements has been estimated at 292,478 hours. The respondents costs were calculated on the basis of $21.00 per hour plus 110% overhead which equals $44.10. The total annual burden to industry is estimated at $12,898,280.

This estimate includes the time needed to review instructions; develop, acquire, install, and use technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing way to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection for information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No additional third party burden is associated with this ICR.

NSPS Subpart WWW, Solid Waste Landfills

Affected entities: Entities potentially affected by this action are each municipal solid waste landfills that commenced construction, reconstruction or modification or began accepting waste after May 30, 1991

Title: New Source Performance Standards for Municipal Solid Waste Landfills.

Abstract: In the Administrator's judgement municipal solid waste (MSW) landfill emissions generated by decomposition of municipal solid waste deposited in an MSW landfill may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category. Owners or operators of MSW landfills for which construction, modification or reconstruction commences on or began accepting waste after May 30, 1991, are subject to NSPS Subpart WWW.

All respondents will need to submit an initial design capacity report. This report would include the landfill's maximum design capacity, date of anticipated startup, and the anticipated refuse acceptance rate. If the design capacity of a new landfill is less than 2,500,000 megagrams (Mg), no further reporting or recordkeeping is required. Under certain circumstances, amended design capacity reports may be required.

If the facility's design capacity is equal to or greater than 2,500,000 Mg, the owner or operator is required to determine the facility's nonmethane organic compound (NMOC) emission rate. Determination of the NMOC rate is carried out using a three-tiered system of calculations as described in 40 CFR part 60.

The first tier is used primarily as a screening tool to determine if additional testing is warranted. If the NMOC emission rate at Tier 1 is less than 50 Mg/yr, neither additional testing nor the installation of controls is warranted. If, using the calculations in the first tier, a facility's NMOC emissions are calculated to be 50 Mg/yr or greater, the owner or operator would be required to either: (1) install a collection and control system; or (2) perform Tier 2 by testing for NMOC concentration and then recalculating the annual NMOC emission rate.

Likewise, if Tier 2 testing and calculations show an NMOC emission rate of 50 Mg/yr or greater, the owner or operator could either install a collection and control system, or recalculate the NMOC emission rate by calculating a site-specific methane generation rate constant using Tier 3.

Tier 1 uses default values specified in the New Source Performance Standards (NSPS) to calculate the NMOC emissions rate, and requires no field testing. Tier 2 and Tier 3 both require sampling. For Tier 2, the NMOC concentration is determined through site-specific sampling using test Method 25C as described in 40 CFR Part 60 Appendix A. For Tier 3 the site specific landfill methane generation rate is determined by gas flow testing using test Method 2E.

If the NMOC emission rate is determined to be less than 50 Mg/yr, using Tier 1, Tier 2, or Tier 3 calculations, no further calculation or testing is required for that year. Owners or operators of MSW landfills emitting less than 50 Mg NMOC per year may submit reports of NMOC emission rates yearly. However, NSPS Subpart WWW, also allow owners or operators to report less frequently. Under these provisions, the NMOC report may be accompanied by an estimation of the annual NMOC emission rate for each of the next 5 years, provided that none of the estimated rates reaches 50 megagrams per year. In this case, the owner or operator would not submit annual reports, but the estimation would be updated and resubmitted every 5 years. The owner or operator would also be required to revise the estimate in any year in which the actual waste acceptance rate for that year exceeds the waste acceptance rate upon which the previously submitted estimate is based.

Owners or operators of landfills with collection and control systems installed in compliance with the standards are not required to submit reports of NMOC emission rates. Owners or operators of affected facilities would be required to keep records of accumulated refuse and waste acceptance rates for a minimum of 5 years.

For landfills required to install collection and control systems (i.e., those emitting greater than 50 Mg/yr of NMOC), submission of a collection and control system design plan is required. After review of the design plan and installation of the collection and control system, an initial performance test and report for the system is required. Thereafter, annual compliance reports would be required.

For control systems using an enclosed combustion device, the initial performance test would also include the average combustion temperature, and the percent reduction of NMOC achieved.

For control systems using a boiler, the initial performance report would include a description of the location at which the emission stream is introduced into the boiler, and the average combustion temperature of the boiler.

For control systems using an open flare, the initial performance report would include a description and the flare type, visible emissions reading, a heat content determination, flow rate measurements, and exit velocity determinations.

Where control devices other than an open flare or closed combustion device are used, owners or operators would be required to submit to the Administrator information describing the control device and parameters that will indicate its proper performance.

Following submission of the initial performance report, owners or operators

would be required to keep continuous monitoring records of the parameters reported in the initial performance report and records of monthly monitoring of the collection system and quarterly monitoring of surface methane concentration. Annual compliance reports and recordkeeping would include: descriptions of any periods in which the value of any of the monitored operating parameters falls outside the established ranges, and any period when the collection system or air pollution control equipment malfunctioned or when the collected gas was diverted from the control device. When applicable, each owner or operator of a controlled landfill will submit a closure report to EPA within 30 days of waste acceptance cessation.

All reports are submitted to the respondent's State or local agency, whichever has been delegated enforcement authority by the EPA. The information collected will be used by EPA personnel to ensure compliance with the NSPS and identify the sources subject to the standards. When appropriate under NSPS, Subpart WWW, each owner or operator of a controlled landfill shall submit annual reports of exceedances, gas steam diversion, control device non-operation, collection system failure, the date at installations and the location of each well or well collection system and equipment removal.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The individual burdens for each of the recordkeeping and reporting requirements applicable to the industry are consistent with the concept of burden under the Paperwork Reduction Act. The only type of industry costs associated with the information collection activity in the standards are labor costs. The labor estimates in the table were derived from the United States Department of Labor Statistics, March 1998, Table 2: Employment Cost for Civilian Workers by Occupational and Industry Group. The average annual burden to industry over the next three years from these recordkeeping and reporting requirements is estimated at 128,213 person-hours. The respondent costs have been calculated on the basis of $17.09 per hour plus 110 percent overhead. The average annual burden to industry over the next three years of the ICR is estimated to be $4,601,565.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart H Sulfuric Acid Plants

Affected entities: Entities potentially affected by this action are those plants that produce sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides and mercaptans, or acid sludge, but does not include facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

Title: New Source Performance Standard Subpart H, Sulfuric Acid Plants, OMB Number 2060–0041, EPA ICR Number 1057.08, Expiration Date: June 31, 1999.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR 60.80, subpart H, New Source Performance Standards for Sulfuric Acid Plants. This information notifies the Agency when a source becomes subject to the regulations, and informs the Agency that the source is in compliance when it begins operation. The Agency is informed of the sources' compliance status by semiannual reports. The calibration and maintenance requirements aid in a source remaining in compliance.

In the Administrator's judgement, sulfur dioxide (SO_2) and acid mist emissions from the manufacture of sulfuric acid cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, New Source Performance Standards have been promulgated for this source category as required under section 111 of the Clean Air Act.

The respondents subject NSPS Subpart H, are owners of sulfuric acid plants. The control of SO_2 and acid mist requires not only the installation of properly designed equipment, but also the proper operation and maintenance of that equipment. Sulfur dioxide and acid mist emissions from sulfuric acid plants result from the burning of sulfur or sulfur-bearing feedstocks to form SO_2, catalytic oxidation of SO_2 to SO_3, and absorption of SO_2 in a strong acid stream. These standards rely on the capture of SO_2 and acid mist by venting to a control device.

Approximately 100 existing facilities are currently subject to the standards. Affected facilities must comply with 40 CFR 60.8 General Provisions recordkeeping and reporting requirements including notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous emission monitoring system (CEMS); notification of the date of the initial performance test; and the results of the initial performance test.

Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with emission standards, and note the operating conditions (acid mist SO_2 concentrations, volumetric flow rates of effluent gas) under which compliance was achieved. After the initial recordkeeping and reporting requirements, semiannual reports are required if there has been an exceedance of control device operating parameters.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notification, reports

and records are required, in general, of all sources subject to NSPS.

Four new facilities are estimated to become subject to NSPS Subpart H annually.

The Administrator has determined that emissions of SO_2 and it's mist cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

In order to ensure compliance with standards promulgated to protect public health, adequate recordkeeping and reporting is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. The information collected from recordkeeping and reporting requirements is also used for targeting inspections, and is of sufficient quality to be used as evidence in court. Recordkeeping and reporting are mandatory under this regulation. Records must be maintained for 5 years.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 595.80 hours per new facility and 220 hours per existing facility. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The current ICR estimates the total annual burden to industry to be $1,094,703. This is based on a total average annual burden of 24,823 respondents with an average wage of $17.09 per hour and 110% overhead. The burden is greatest for facilities in their first year of operation. The burden in the first year for reporting requirements is estimated to be 455.80 hours per facility. The burden for future years is greatly reduced because the initial notifications and initial performance tests are not required in subsequent years. The estimated burden for recordkeeping requirements for subsequent years per respondent is 140 person hours. This estimate includes the time to enter information regarding records of operating parameters and calculations/record of conversion factors.

The following is a breakdown of burden used in the ICR. The estimated burden is calculated as two hours for respondents to write the reports for; notification of construction or reconstruction, notification of physical or operation changes, notification of anticipated startup, notification of actual startup, notification of initial performance test, notification of demonstration of continuous monitoring system (CMS). The ICR uses 300 burden hours for the initial performance test. It is assumed that 20% of all affected facilities will have to repeat performance tests. The ICR uses four hours for performing the Reference Method 9 Test. It is estimated that performance of Reference Method 9 Test will occur, on average, 1.2 times per facility a year. The ICR uses 40 hours to write an excess emission reports. It is assumed an excess emission report will take place twice a year.

The recordkeeping burden is estimated to be 0.25 hours to enter information regarding records of operating parameters. It is assumed this will take place 350 times a year per facility. The burden to enter information regarding calculation/record of conversion factors is 0.5 hours. It is assumed this will take place 1,050 times a year per facility.

NSPS Subpart XX, Bulk Gasoline Terminals

Affected entities: Entities potentially affected by this action are those which are subject to NSPS Subpart XX, Bulk Gasoline Terminals.

Title: New Source Performance Standard Subpart XX, Bulk Gasoline Terminals, OMB Control Number 2060–0006, EPA ICR Number 0664.06, Expiration Date: June 30, 1999.

Abstract: In the Administrator's judgment , VOC emissions from Bulk Gasoline Terminals may cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, New Source Performance Standards (NSPS) for Bulk Gasoline Terminals were proposed on December 17, 1980 and were promulgated on August 18, 1983, and amended on December 22, 1983. The standards are codified at 40 CFR part 60, subpart XX. These standards apply to the total of all loading racks at bulk gasoline terminals which deliver liquid product into gasoline tank trucks and for which construction, modification or reconstruction commenced after the date of proposal. A bulk gasoline terminal is any gasoline facility which receives gasoline by pipeline, ship or barge, and has a gasoline throughput greater than 75,700 liters per day. Volatile organic compounds (VOCs) are the pollutants regulated under this standard.

Owners or operators of Bulk Gasoline Terminals must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test.

In order to ensure compliance with standards promulgated to protect public health, adequate recordkeeping and reporting is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. The information collected from recordkeeping and reporting requirements is also used for targeting inspections, and is of sufficient quality to be used as evidence in court. Recordkeeping and reporting are mandatory under this regulation. Records must be maintained for 2 years.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown,

or malfunction in the operation of an affected facility. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Monitoring requirements specific to bulk gasoline terminals consist mainly of identifying and documenting vapor tightness for each gasoline tank truck that is loaded at the affected facility, and notifying the owner or operator of each tank truck that is not vapor tight. The owner or operator must also perform a monthly visual inspection for liquid or vapor leaks, and maintain records of these inspections at the facility for a period of two years.

Approximately 40 affected facilities are currently subject to NSPS Subpart XX. The reporting requirements for this industry currently include only the initial notifications and initial performance test report listed above. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to ensure that the pollution control devices are properly installed and operated. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and note the operating conditions under which compliance was achieved.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average .13 hours per response. For reporting requirements it is estimated that it will take one person-hour to read the instructions. The ICR uses 60 burden hours for the initial performance test this includes the burden to write the report of the performance test. It is assumed that 20% of all affected facilities will have to repeat performance tests.

The burden to enter records of tank identification numbers is 0.1 of an hour with the assumption it takes six minutes to enter each tank truck identification number. It is estimated there will be approximately 2,100 truck loadings per year based on six tank trucks each day multiplied by 350 days per year. It is estimated that leak detection records from monthly inspection of control equipment is one person-hour every two years.

Approximately 40 sources are currently subject to NSPS Subpart XX. Because no growth in the industry is expected, no additional sources are expected to become subject to this standard over the next three years. Therefore, the only type of industry cost associated with the information collection activity in the standards are labor cost. The labor estimates were derived from the United States Department of Labor Statistics, March 1998, Table 2: Employment Cost for Civilian Workers by Occupational and Industry Group. The average annual burden to industry over the next three years from these recordkeeping and reporting requirements is 11,420 person hours. The respondent cost are calculated on the basis of $17.09 per hour plus 110 percent overhead. The average burden to the industry over the next three years is estimated to be $409,750. This estimate includes the time needed to enter information—records of start-up, shutdown, malfunction, or any periods during which the monitoring system is inoperative is estimated to be one and one half hours 50 times per year or about one occurrence per week.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NESHAP Subpart N, Inorganic Arsenic Emissions From Glass Manufacturing

Abstract: The Administrator has judged that arsenic emissions from glass manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

Owners or operators of sources covered by the National Emission Standard for Hazardous Air Pollutants Subpart N, are subject to the recordkeeping and reporting requirements of the standards as well as those standards prescribed in the General Provisions of the NESHAP.

Title: NESHAP Subpart N, Inorganic Arsenic Emissions from Glass Manufacturing OMB Control Number 2060–0043, EPA ICR Number 1081.06, Expiration Date: July 31,1999.

Owners or operators of the affected facilities described must make the following one-time-only reports: application for approval of construction or modification (new sources) or a source report (existing sources or new sources with initial start-up preceding effective date of standard); and notification of anticipated and actual dates of start-up. Calculations estimating new emission levels must be reported whenever a change of operation is made that would potentially increase emissions.

Approximately 47 sources subject to NESHAP Subpart N are required to demonstrate initial compliance through emission tests. In addition, a continuous monitoring system for the measurement of the opacity of emissions from any control device must be installed and operated. Records of continuous emission monitoring (CEM) results and other data needed to determine emission concentrations shall be maintained at the source and made available for inspection a minimum of two years.

A written report of each period for which emission rates exceeded the emission limits is required semiannually. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional office. Applications and written reports are sent directly to the EPA Regional office. These reports are used to inform the Agency or delegated authority when a source becomes subject to the standards, and the nature of that source. Notification of

start-up informs the reviewing authority at what date the source commences operation. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated.

Reports, including calculations estimating any subsequent emission levels, are necessary to keep the Agency informed about the source's activities in terms of hazardous air pollutant emissions.

In order to protect public health, adequate recordkeeping and reporting is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

The information collected from recordkeeping and reporting requirements is also used for targeting inspections, and is of sufficient quality to be used as evidence in court. Recordkeeping and reporting are mandatory under this regulation. Records must be maintained for 2 years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 29, 1995.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6,769 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The estimated annual costs for operation and maintenance of pollution control equipment is $175,000. This figure was calculated using estimates provided by a glass manufacturing industry consultant who stated that operation and maintenance of pollution control equipment costs approximately $2.00 per ton of glass manufactured with the average container glass facility manufacturing 250 tons per day for 350 days per year.

The annual average burden to industry over the next three year period from recordkeeping and reporting requirements has been estimated at 6,769 person hours. The respondents costs were calculated on the basis of $17.09 per hour plus 110% overhead which equals $35.89. The Total Annualized Cost Burden is estimated at $242,939. The estimated number of respondents for this ICR is 47.

Send comments regarding these matters, or any aspect of the information collection, including suggestions for reducing the burden, to the address listed in the Address section of this Notice. Please refer to EPA ICR No. 1081 and OMB Control No. 2060.0043 in any correspondence.

NSPS Subpart CC: Glass Manufacturing Plants

Affected entities: Entities potentially affected by this action are those which are subject to New Source Performance Standards (NSPS) Subpart CC, Standards of Performance for Glass Manufacturing Plants.

Title: NSPS Subpart CC, Standards of Performance for Glass Manufacturing Plants. OMB Control Number 2060–0054, EPA ICR Number 1131.05, Expiration date: July 31, 1999.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with Subpart CC, New Source Performance Standards for Glass Manufacturing Plants. This information notifies the Agency when a source becomes subject to and is in compliance with the regulations of NSPS Subpart CC.

In the Administrator's judgement, particulate matter from glass manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, New Source Performance Standards have been promulgated for this source category as required under section 111 of the Clean Air Act.

The control of emissions of particulate matter requires not only the installation of properly designed equipment, but also the proper operation and continuous maintenance of that equipment. These standards rely on the capture of pollutants vented to a control device.

Owners or operators of glass manufacturing plants subject to NSPS Subpart CC are required to make initial notifications for construction, startup, and performance testing. They must also report the results of a performance test, and demonstration of a continuous monitoring system if applicable. After the initial recordkeeping and reporting requirements, semiannual excess emission reports are required but only from sources with modified processes. It is estimated that seventy five percent of sources will have modified processes.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or malfunction in the operation of the air pollution control device, or any periods during which the monitoring system is inoperative. These notifications, reports and records are required in general, of all sources subject to NSPS.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: At the writing of this ICR there are approximately 30 sources currently subject to the standards. It is estimated that 1.7 additional sources per year will become subject to the standard. The current ICR estimates average burden to the industry to be 25534 person hours. The respondent costs have been calculated on the basis of $17.10 per hour plus 110 percent overhead rate or $35.88. The current ICR also estimates the average annual burden to the industry is $91,602.

The following is a breakdown of burden used in the ICR. Burden is calculated as two hours for respondents to write the reports for: notification of construction or reconstruction, notification of physical or operational changes; notification of anticipated startup; notification of actual startup; notification of initial performance test; notification of demonstration of Continuous Operations Monitoring (COM). Initial performance tests are allocated 160 burden hours. It is assumed that 20% of all affected facilities will have to repeat performance tests. Sources which have modified processes are required to submit semiannual excess emission reports. Excess emission reports are allocated 8 burden hours and 2 reports per year.

The recordkeeping burden is estimated to be 15 minutes to enter records of operating parameters. It is assumed that the plant will operate 250 days a year; therefore, this information will be recorded 250 times a year. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Collection of Information Regarding Exposure Levels In Wood Treatment Plants

Affected entities: Entities potentially affected by this action are those that treat wood with preservative formulations containing arsenic. The Standard Industrial Code for the wood preserving industry is 2491.

Title: Wood Preservatives—Submission of Information Regarding Arsenic Exposure Levels in Wood Treatment Plants, OMB Control Number 2070–0081, EPA ICR Number 1289.05, Expiration Date: July 31, 1999.

Abstract: This information collection provides wood treaters that use arsenic formulations a way to exempting themselves from the Federal Insecticide, Fungicide, and Rodenticide, Act (FIFRA) pesticide label requirements dictating that all applicators of the product wear NIOSH-approved respirators. This opportunity for facilities to exempt themselves from the respirator requirements is called the Permissible Exposure Limit Monitoring Program (PEL) and it is incorporated in the final settlement of the ''Notice of Intent To Cancel Registrations of Pesticide Products Containing Creosote, Pentachlorophenol (Including Its Salts) and Inorganic Arsenic'' which is published in the July 1984, 49 FR 28674. Facilities that choose to participate in the voluntary PEL can do the following to exempt themselves from the respirator requirements.

First, the facility needs to conduct air monitoring for air-borne arsenic. Facilities that have air-borne arsenic levels that are higher than the permissible exposure limit would have to continue to require plant personnel to wear respirators. If a facility's air-borne arsenic levels are below the permissible exposure limit they are no longer required to wear respirators. Depending on how close the levels are to the permissible exposure limit, the facility is required to retest periodically or fill out a checklist, which indicates if arsenic exposure levels are likely to increase due to changes in the facility's industrial process.

Owners or operators who participate in the PEL exemption must monitor and submit an initial report with annual certification. Additional monitoring is required only when conditions set out in the PEL Checklist are different from those occurring during the initial testing. Monitoring and reporting less than this would not assure that exposure to inorganic arsenic is acceptable.

If the air level exceeds 10 ug/m^3 over an eight hour period employees will be required to wear respirators until at least two consecutive measurements show the air arsenic levels are below 10 ug/m^3. If the arsenic air levels are between 10 mg/m^3 and 5ug/m^3, monitoring must be repeated after 6 months. Monitoring may cease if the air level is 5 ug/m^3 or below unless a production, process, control, or other procedure identified in the ''PEL Checklist'' has occurred resulting in possible new or additional employee exposure to inorganic arsenic.

Approximately 300 participating facilities must submit the air monitoring test results to EPA, or if arsenic levels are low and testing is not required, then they can simply fill out the checklist and submit it to EPA. Approximately 50 plants are required to monitor during a given year. All submissions must certify that the information provided is accurate.

EPA uses the certification and air monitoring data to determine if the wood preserving facility is complying with the air-borne arsenic levels set by the cancellation order, which was set to ensure that plant personnel are not exposed to levels of arsenic that pose an unacceptably high health risk. This data will also be used to monitor which wood preserving facilities are participating in the PEL program and thus could be exempt from the pesticide label requirement to wear a respirator. Because the information that is submitted to EPA would not be confidential business information, the submittals from the facilities will not be handled as such.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological

collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: This information collection assumes that of the estimated 300 wood preserving plants that use arsenic formulation, 200 of these participate in the PEL program. The majority of the participants, approximately 150, have conducted monitoring in the past that has demonstrated that arsenic levels are well below the permissible exposure level. These facilities that are not required to test are required to simply fill out and submit the 6 question PEL checklist, which asks if the facility has changed their process and in doing so may have increased the levels of air-borne arsenic. These 150 plants will spend .75 hours on each submittal at a cost of $17.09 per hour in wages and 110% in overhead for a total cost of $35.89 per hour. Thus each facility will spend $26.92 for the annual submission.

Collectively, the 150 plants will spend $4,038 on filling out and submitting the checklist.

EPA estimates that each of the approximately 50 plants that are required to monitor during a given year will spend 17.5 hours on preparing and conducting the tests. When calculating cost, EPA assumes an hourly wage of $17.09 with 110% added as overhead for a total hourly cost of $35.89. Thus, a single facility will spend approximately $628 on each test. Collectively, the 50 plants that conduct monitoring will spend $31,400 on monitoring. The total cost for monitoring and submittal costs is $34,438.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: December 28, 1998.

Bruce R. Weddle,

Acting Director, Office of Compliance.

[FR Doc. 99–132 Filed 1–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6214–7]

Announcement of Public Meeting of Stakeholders on Resource Needs and Shortfall for Administering and Implementing State Water Quality Programs Under the Clean Water Act

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) may be conducting a series of stakeholder dialogue meetings on the resource needs and shortfall for administering and implementing State water quality programs under the Clean Water Act. The purpose of the meetings is to solicit input in defining the scope of State water quality programs, identify the approach and methodology for data collection, identify priorities and strategies for comprehensive stakeholder approaches to address the problem. The first meeting will focus on what activities are to be covered under the water quality program, the approach and methodology for proceeding and identification of priorities. Subsequent meetings will be announced as work progresses. The meeting is open to the public.

DATES: The first meeting is scheduled for Wednesday, January 20, 1999 from 8:30 a.m. to 5:00 p.m. EST.

ADDRESSES: To register for the meeting, please contact Ms. Shadonna Price between the hours of 12:00 pm and 3:00 pm EST or electronically register through the Internet at the following address: *http://161.80.11.87/water/waterquality*. All materials (agenda, background materials) will be available on this website. Meeting room space is limited to 40 people and will be available on the basis of first reserved, first served. Interested parties who are unable to attend but would like to participate in the discussion, may provide comment on any of the materials via the website which will be monitored with contractor support. The stakeholders meeting will be held at the Radisson Barcelo, 2121 P. Street, Washington, D.C.; phone 202–293–3100.

FOR FURTHER INFORMATION CONTACT: For general information, visit the interactive website at *http://161.80.11.87/water/waterquality*. Should you have technical problems accessing the website, please contact the technical hotline at (202) 260–1013.

Dated: December 28, 1998.

Alfred Lindsey,

Deputy Director, Office of Wastewater Management, Designated Federal Official.

[FR Doc. 99–134 Filed 1–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6214–8]

Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities (Peer Review Draft)

AGENCY: Environmental Protection Agency.

ACTION: Notice; extension of public comment period.

SUMMARY: On Friday, October 30, 1998 the Environmental Protection Agency (''EPA'' or ''the Agency'') published a document in the **Federal Register** (63 FR 58381) that the guidance document *Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities* (Peer Review Draft–EPA530–D–98–001A, B & C) was available and that the Agency was opening a 60-day comment period. This risk assessment guidance document contains the Office of Solid Waste's (OSWs) recommended approach for conducting site-specific risk assessments on RCRA hazardous waste combustors. The comment period for this document is currently scheduled to close on December 29, 1998.

However, due to the broad scope, detail, and complexity of this three volume guidance document, the Agency has received a number of requests to extend the public comment period. OSW has considered these requests and decided to extend the review period for an additional 30 days; making the new closing date January 28, 1999. Therefore, OSW expects that all public comments on the guidance document will be received on, or before the close of business on January 28, 1999.

DATES: Public comments on the document *Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities* (Peer Review Draft–EPA530–D–98–001A, B & C) should be received by the RCRA docket no later than January 28, 1999.

FOR FURTHER INFORMATION CONTACT: For further information contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (if hearing impaired); in the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For specific questions on

implementation of the methods described in this document, please contact your RCRA regulatory authority; for other questions contact Karen Pollard, Office of Solid Waste, 5307W U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; phone: (703) 308–3948; e-mail: Pollard.Karen@EPA.gov.

ADDRESSES: Commenters must send the original and two copies of their comments referencing docket number F–98–HHRA–FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Comments submitted electronically comments should be identified by the docket number F–98–HHRA–FFFFF and submitted to: *RCRA-docket@epamail.epa.gov.* Submit electronic comments in an ASCII file and avoid the use of special characters and any form of encryption. EPA's Office of Solid Waste (OSW) also accepts data on disks in Wordperfect 6.1 file format.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of the CBI must be submitted under separate cover to: Regina Magbie, RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street SW, Washington, DC 20460.

Public comment and supporting materials will be made available for viewing from 9 a.m. to 4 p.m., Monday through Friday (except Federal holidays) in the RIC, located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. To review docket materials, the public must make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The docket index and notice are available electronically. See the ''Supplementary Information'' section for information on accessing it.

SUPPLEMENTARY INFORMATION: For paper or CD–ROM copies of the guidance document, please contact the RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460, (703) 603–9230. The document is a three volume set, the document numbers are EPA 530–D–98–001A; 530–D–98–001B; and 530–D–98–001C. Copies of this document may also be obtained from the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. The document is also available in electronic format on the world wide web at: http://www.epa.gov/epaoswer/hazwaste/combust/risk htm.

EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII(TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. This expedited procedure is in conjunction with the Agency ''Paperless Office'' campaign.

Dated: December 23, 1998.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 99–133 Filed 1–4–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 the proposed information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the National Fire Incident Reporting System (NFIRS); a national annual collection of fire incident data.

SUPPLEMENTARY INFORMATION: Public Law 93–498, Federal Fire Prevention and Control Act of 1974, Section 9(a) authorizes the Administrator, U.S. Fire Administration (USFA), to operate the National Fire Data Center (NFDC). The purpose of the NFDC is to provide an accurate nationwide analysis of the fire problem, identify major problem areas, assist in setting priorities, determine possible solutions to problems, and monitor the progress of programs designed to reduce fire losses. The National Fire Incident Reporting System (NFIRS) was designed as the vehicle to gather, analyze, publish, and disseminate data related to the prevention, occurrence, control, and results of fires of all types.

Collection of Information

Title: National Fire Incident Reporting System (NFIRS).

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0161.

Form Numbers: NFIRS–1, Incident Report is used to describe each incident (or call) to which a fire department responds—Hour burden, 1.

NFIRS–2, Civilian Casualty Report is used to report injuries or deaths of civilians or other emergency personnel (such as police or ambulance attendants) that occur in conjunction with an incidents—Hour burden, 55 minutes.

NFIRS–3, Fire Service Casualty Report is used to report injuries or deaths of fire service personnel that occur in conjunction with any incident response—Hour burden, 50 minutes.

NFIRS–4, Fire Department Identification, contains information that the State NFIRS Program Manager must collect for each fire department reporting on NFIRS—Hour burden, 30 minutes.

NFIRS–5, Report of Submitted Incidents contains information that the State NFIRS Program Manager may use to help verify and balance the number of incidents contained in the computer with the number of actual incident report forms submitted—Hour burden, 30 minutes.

NFIRS–HMI, Hazardous Material Incident Report is used in conjunction with NFIRS–1 to provide detailed information about hazardous material incidents so that data can be gathered to assist local, state and national agencies in dealing with national problems—Hour burden, 45 minutes.

Abstract: NFIRS data is used at the Local, State, and Federal levels as a standard method of collecting information concerning fire incidents, which is employed to quantify national experience and to formulate intervention strategies which target loss reduction from fire.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 14,000.

Number of Responses: 980,000.
Estimated Total Annual Burden Hours: 983,000
Estimated Cost: $1.6M

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email anderson.muriel@fema.gov.

FOR FURTHER INFORMATION CONTACT: Alexandra Furr, Branch Chief, National Fire Data Center, (301) 447–1353. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: December 23, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–116 Filed 1–4–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), 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 the proposed information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning FEMA and other Federal agencies policies and procedures for providing Federal support for offsite radiological emergency planning and preparedness. It describes the process for providing Federal facilities and resources to the nuclear power plant licensee after an affirmative determination has been made on the licensee's certification of a ''decline or fail'' situation.

SUPPLEMENTARY INFORMATION: Executive Order 12657, dated November 18, 1998, charged FEMA and other Federal agencies with the emergency planning response in cases where State and Local governments have declined or failed to prepare emergency plans. To implement Executive Order 12657, FEMA worked with the Nuclear Regulatory Commission (NRC) and other Federal agencies on the Federal Radiological Preparedness Coordinating Committee (FRPCC) to develop regulation 44 CFR 352, Commercial Nuclear Power Plants: Emergency Preparedness planning. This regulation establishes policies and procedures for a licensee submission of a certification of ''decline or fail'', and for FEMA's determination concerning Federal assistance to the licensee. It also establishes policies and procedures for providing Federal Support for offsite planning and preparedness.

In accordance with Executive Order 12657, FEMA will need certain information from the licensee in order to form a decision as to whether or not a condition of ''decline or fail'' exists on the part of State or Local governments (44 CFR 352.3–4). This information will be collected by the appropriate FEMA Regional Office or Headquarters. Also, when a licensee requests Federal facilities or resources, FEMA will need information from the NRC as to whether the licensee has made maximum use of its resources and the extent to which the licensee has complied with 10 CFR 50.47(c)(1) and 44 FR 352.5. This information will be collected by the NRC and will be provided to FEMA through consultation between the two agencies.

Collection of Information

Title: Federal Assistance for Offsite Radiological Emergency Planning.
Type of Information Collection: Reinstatement, without change of a previously approved collection for which approval has expired.
OMB Number: 3067–0201.
Form Numbers: None.

Abstract: In accordance with Executive Order 12657 and under regulation 44 CFR 352, FEMA will need certain information from the licensee in order to form a decision as to whether or not a condition of ''decline or fail'' exists on the part of the State or Local government. Also, when a licensee requests Federal facilities or resources, FEMA will need information from the NRC as to whether the licensee has made maximum use of its resources and the extent to which the licensee has complied with 10 CFR 50.47(c)(1).
Affected Public: Business or Other For-Profit and State, Local or Tribal Government.
Number of Responses: 1.
Hour Burden Per Response: 160.
Estimated Total Annual Burden Hours: 160.
Estimated Cost: $3,323.

COMMENTS: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: William McNutt, Emergency Management Specialist, Preparedness, Training and Exercises Directorate, (202) 646–2857 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information or email muriel.anderson@fema.gov.

Dated: December 23, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–118 Filed 1–4–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), 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 the proposed information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the collection of information from private insurance companies that apply for participation in the Write Your Own (WYO) program.

SUPPLEMENTARY INFORMATION. The WYO was established in response to the increase in losses and escalating costs of natural disasters to American taxpayers. The Federal Insurance Administration (FIA) and private insurance companies participate in a joint venture to market and service flood insurance under the names of the private insurance companies. FIA may enter into an agreement with private insurance companies, whereby the companies may offer flood insurance coverage to eligible property owners. FIA requires a one-time submission of information to determine a company's qualification, as set for in 44 CFR Part 62, subpart 62.24. FIA requires the information to determine whether an applicant for entry or reentry has the ability to process flood insurance and meet the reporting requirements of the WYO Financial Control Plan.

Collection of Information

Title: Write Your Own Program (WYO) Company Participation Criteria; New Applicants.

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0259.

Form Numbers: None.

Abstract: Under the Write Your Own Program, private sector insurance companies may offer flood insurance to eligible property owners. The Federal Government is a guarantor of flood insurance coverage for WYO Companies, issued under the WYO arrangement. To determine eligibility for participation in the WYO, the National Flood Insurance Program (NFIP) is requiring a one-time submission demonstrating their qualification for participation from each new company seeking entry into the Program.

Affected Public: Business or other for profit.

Number of Responses: 5.

Hour Burden Per Response: 7.

Estimated Total Annual Burden Hours: 35.

COMMENTS: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days from the date notice is published in the **Federal Register**.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Edward T. Pasterick, Chief, Financial Division, (202)646–3443 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: December 23, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–119 Filed 1–4–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Write Your Own Program.

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0169.

Abstract: Under the Write-Your-Own program, private sector insurance companies may offer flood insurance to eligible property owners. The federal government is a guarantor of flood insurance coverage for WYO companies, issued under the WYO arrangement. In order to maintain adequate financial control over federal funds, the NFIP requires each WYO company to submit a monthly financial report.

Affected Public: Businesses or other for profit.

Number of Respondents: 120.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 792.

Frequency of Response: Monthly.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of the Management Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email address muriel.anderson@fema.gov.

Dated: December 23, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate

[FR Doc. 99–117 Filed 1–4–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1258–DR]

Kansas; Amendment No. 7 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 Kansas (FEMA–1258–DR), dated November 5, 1998, and related determinations.

EFFECTIVE DATE: December 16, 1998

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 Kansas, is hereby amended to include 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 November 5, 1998:

Woodson County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers CCFDA) 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.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–122 Filed 1–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1257–DR]

Texas; Amendment No. 9 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 Texas, (FEMA–1257–DR), dated October 21, 1998, and related determinations.

EFFECTIVE DATE: December 17, 1998.

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 Texas, is hereby amended to include 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 October 21, 1998:

Jim Wells, Kendall, Lavaca, and Walker Counties for Individual Assistance.

(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.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–120 Filed 1–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1257–DR]

Texas; Amendment No. 10 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 Texas, (FEMA–1257–DR), dated October 21, 1998, and related determinations.

EFFECTIVE DATE: December 18, 1998.

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 Texas, is hereby amended to include 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 October 21, 1998:

Grimes, Liberty, Matagorda, Nueces, Polk, San Jacinto, Trinity, and Walker Counties for Public Assistance (already designated for Individual Assistance).

(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.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–121 Filed 1–4–99; 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.: 203–011555–007.

Title: Carrier Services Agreement.

Parties: A.P. Moller-Maersk Line, Atlantic Container Line AB, Hapag Lloyd Container Line GmbH, Mediterranean Shipping Co., S.A., Nippon Yusen Kaisha, Orient Overseas Container Line (UK) Ltd., P&O Nedlloyd B.V., P&O Nedlloyd Limited, POL-Atlantic, Sea-Land Service, Inc., Tecomar Limited, Mexican Line Limited, DSR-Senator Lines, Hyundai Merchant Marine Co., Ltd., Evergreen Marine Corp.

Synopsis: The proposed agreement amendment restates and renames the basic agreement, deletes self-policing provisions of the current agreement and makes conforming modifications, and reduces the financial security required by the agreement. The parties request expedited review.

Dated: December 30, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 99–100 Filed 1–4–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing

of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 3360.

Name: Overbruck International, Inc.

Address: 16225 South Broadway, Gardena, CA 90248.

Date Revoked: November 18, 1998.

Reason: Surrendered license voluntarily.

License Number: 3589.

Name: Phillips Freight Forwarding, Inc.

Address: 10097 Cleary Blvd., suite 266, Plantation, FL 33324.

Date Revoked: November 20, 1998.

Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 99–23 Filed 1–4–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

YCS International, Inc.

10990 Roe Avenue, Overland Park, KS 66211, Officer: Peter Brown, President

Dated: December 30, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 99–101 Filed 1–4–99; 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 January 19, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Gerald E. Ludwig, Effingham, Illinois; to acquire additional voting shares of Illinois Community Bancorp, Inc., Effingham, Illinois, and thereby indirectly acquire additional voting shares of Illinois Community Bank, Effingham, Illinois.

Board of Governors of the Federal Reserve System, December 30, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–96 Filed 1–4–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, January 11, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 31, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–34840 Filed 12–31–98; 10:43 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Native Employment Works (NEW) Program Plan Guidance and Report Requirements

OMB No.: 0970–0174

Description: The purpose of this document is to determine whether a Tribal plan is complete and will fulfill NEW program grantee's intended purpose, goals and objectives of providing work activities to its service population. The plan will provide an outline of how the Tribes' programs will be administered and operated and instructions for reporting participant and program characteristics.

It is also used to provide the public work information about the NEW program.

Respondents: Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Program plan	78	1	13.2	1,030
Program operations report	78	1	16	1,248

Estimated Total Annual Burden Hours: 2,278

Addition Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Service, 370 L'Enfant Promenade, S.W., Washington D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to made a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Attn: Ms. Wendy Taylor.

Dated: December 29, 1998.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 99–27 Filed 1–4–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0213]

Agency Information Collection Activities; Announcement of OMB Approval; Recordkeeping for Electronic Products, Specific Product Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Reporting and Recordkeeping for Electronic Products: Specific Product Requirements'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 6, 1998 (63 FR 53677), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0213. The approval expires on December 31, 2001.

Dated: December 24, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–71 Filed 1–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1168]

Draft Guidance for Industry on ANDA's: Impurities in Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''ANDA's: Impurities in Drug Products.'' This draft guidance provides recommendations for including information in abbreviated new drug applications (ANDA's) on the reporting, identification, and qualification of impurities in drug products produced from chemically synthesized drug substances for both monograph and nonmonograph drug products.

DATES: Written comments on the draft guidance may be submitted by May 5, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm.'' Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5600 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Devinder S. Gill, Office of Generic Drugs, Center for Drug Evaluation and Research (HFD–623), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5848.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''ANDA's: Impurities in Drug Products.'' This draft guidance provides information for generic drug products on the following: (1) Qualifying degradation products via a comparison with impurities found in the related United States Pharmacopeia (USP) monograph, scientific literature, or innovator material; (2) qualifying degradation products found at higher levels in the generic drug product than found in the related USP monograph, scientific literature, or innovator material; (3) qualifying degradation products that are not found in the related USP monograph, scientific literature, or innovator material; and (4) threshold levels below which qualification is not needed.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on the review of impurities in generic drug products produced from chemically synthesized drug substances. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

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

Dated: December 24, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–31 Filed 1–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1195]

Draft Guidance for Industry on Bioanalytical Methods Validation for Human Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Bioanalytical Methods Validation for Human Studies.'' This draft guidance provides assistance to sponsors and applicants of investigational new drug applications (IND's), new drug applications (NDA's), abbreviated new drug applications (ANDA's), and supplements, in developing validation information for bioanalytical methods used in human clinical pharmacology, bioavailability, and bioequivalence studies. This draft guidance does not cover analytical methods used for nonhuman pharmacology/toxicology studies, chemistry, manufacturing, and controls information, or in vitro dissolution studies.

DATES: Written comments may be submitted on the draft guidance document by March 8, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm''. Submit written requests for single copies of ''Bioanalytical Methods Validation for Human Studies'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vinod P. Shah, Center for Drug Evaluation and Research (HFD–350), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5635.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''Bioanalytical Methods Validation in Human Studies.'' This draft guidance is based primarily on the report of a conference on Analytical Methods Validation: Bioavailability, Bioequivalence and Pharmacokinetic Studies, held on December 3 to 5, 1990, sponsored by FDA, the American Association of Pharmaceutical Scientists, Federation Internationale Pharmaceutique, the Canadian Health Protection Branch, and Association of Official Analytical Chemists.

This draft level 1 guidance document is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on bioanalytical methods validation in human studies. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 24, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–69 Filed 1–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1164]

Food Additive Petition Expedited Review—Guidance for Industry and Center for Food Safety and Applied Nutrition Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food And Drug Administration (FDA) is announcing the availability of a guidance document entitled ''Food Additive Petition Expedited Review—Guidance for Industry and Center for Food Safety and Applied Nutrition Staff.'' FDA believes it is in the interest of enhanced food safety to review petitions for certain food additives in an expedited manner. Expedited review will be considered when an additive is intended to decrease incidences of foodborne illnesses through its antimicrobial actions against human pathogens that might be present in food.

DATES: Written comments concerning this guidance may be submitted at any time.

ADDRESSES: Written comments concerning this guidance may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit written requests for single copies of the guidance to the Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St. SW., Washington DC 20204, or by telephone to the Office of Premarket Approval at 202–418–3100 (voice), or FAX 202–418–3131. All requests should identify the guidance by its title of ''Food Additive Petition Expedited Review—Guidance for Industry and Center for Food Safety and Applied Nutrition Staff.'' See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration, 200 C St. SW., Washington DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) provides for the approval of the use of food additives that are shown to be safe for their intended use. Section 409 of the act (21 U.S.C. 348) provides for the filing of petitions to request such approval, and also authorizes FDA (by delegation) to initiate the approval process. The agency receives food additive petitions for a broad range of proposed uses, including petitions proposing the approval of a substance for use in reducing the number of pathogens in or on food.

FDA believes it is in the interest of enhanced food safety to review petitions for certain food additives in an expedited manner. Expedited review will generally be considered when an additive is intended to decrease the incidence of foodborne illness through its antimicrobial action against human pathogens that might be present in food.

Designating a food additive petition for expedited review means that the food additive petition would be reviewed ahead of other pending food additive petitions, i.e., the petition will be placed at the beginning of the appropriate review queues. All other aspects of the review process (e.g., data requirements for the petition, procedures for evaluating petitions and communicating with petitioners) will be the same for an expedited review petition as for all other food additive petitions.

II. Significance of Guidance

This guidance document represents the agency's current thinking on the procedures to be followed for expedited review of food additive petitions. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

The guidance document entitled ''Food Additive Petition Expedited Review—Guidance for Industry and Center for Food Safety and Applied Nutrition Staff'' is a Level 1 guidance under the agency's Good Guidance Practices (62 FR 8961, February 27, 1997). Level 1 guidance documents are generally subject to public comment prior to implementation. However, public comment prior to implementation of this guidance document is not required because there is a public health justification for immediate implementation.

III. Comments

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments regarding the guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Such comments will be considered when determining whether to amend the guidance.

IV. Electronic Access

The guidance may also be accessed at the Center for Food Safety and Applied Nutrition home page on the World Wide Web at ''http://www.fda.gov/cfsan''.

Dated: December 15, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–70 Filed 1–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95D–0349]

Draft Guidance for Industry on SUPAC–SS: Nonsterile Semisolid Dosage Forms, Manufacturing Equipment Addendum; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''SUPAC–SS: Nonsterile Semisolid Dosage Forms, Manufacturing Equipment Addendum.'' This draft guidance is intended to provide recommendations to pharmaceutical manufacturers using the Center for Drug Evaluation and Research's guidance for industry, ''SUPAC–SS Nonsterile Semisolid Dosage Forms, Scale-Up and Post Approval Changes: Chemistry Manufacturing and Controls; In Vitro Release Testing and In Vivo Bioequivalence Documentation'' (SUPAC–SS).

DATES: Written comments on the draft guidance document may be submitted by March 8, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm.'' Written requests for single copies of the draft guidance for industry should be submitted to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nancy B. Sager, Center for Drug Evaluation and Research (HFD–357), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5633.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''SUPAC–SS: Nonsterile Semisolid Dosage Forms, Manufacturing Equipment Addendum.'' This document should be used in conjunction with the guidance for industry, ''SUPAC–SS Nonsterile Semisolid Dosage Forms, Scale-Up and Post Approval Changes: Chemistry Manufacturing and Controls; In Vitro Release Testing and In Vivo Bioequivalence Documentation'' (SUPAC–SS), which published in June 1997 (62 FR 32352, June 13, 1997), in determining what documentation should be submitted to FDA regarding equipment changes made in accordance with the recommendations of the SUPAC–SS guidance document.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). This draft guidance represents the agency's current thinking on equipment changes under SUPAC–SS. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

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

Dated: December 24, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–29 Filed 1–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0401]

''Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Vaccine or Related Product;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled ''Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Vaccine or Related Product.'' The guidance document provides guidance to applicants on the content and format of the chemistry, manufacturing and controls (CMC) and establishment description sections of the ''Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use'' (revised Form FDA 356h) for vaccines or related products. This action is part of FDA's continuing effort to achieve the objectives of the President's ''Reinventing Government'' initiatives and the FDA Modernization Act of 1997, and is intended to reduce unnecessary burdens for industry without diminishing public health protection.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Vaccine or Related Product'' to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance document entitled ''Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Vaccine or Related Product.'' This guidance document is intended to provide guidance to applicants in completing the CMC section and the establishment description information of revised Form FDA 356h. The guidance announced in this notice supersedes the draft guidance entitled ''Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Vaccine or Related Product'' announced in the **Federal Register** of June 19, 1998 (63 FR 33686). In the **Federal Register** of July 8, 1997 (62 FR 36558), FDA announced the availability of Form FDA 356h that will be used as a single harmonized application form for all drug and licensed biological products. Manufacturers may voluntarily begin using this form for vaccines or related products. FDA will announce in the future when manufacturers are required to use this form for all products. Use of the new harmonized Form FDA 356h will allow a biologic product manufacturer to submit one biologics license application instead of two separate applications (product license application and establishment license application).

This guidance document represents FDA's current thinking on the content and format of the CMC and establishment description sections of a license application for a vaccine or related product. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this guidance document to be all-inclusive and cautions that not all information may be applicable to all situations. The guidance document is intended to provide information and does not set forth requirements.

II. Comments

Interested persons, may at any time, submit to the Dockets Management Branch (address above) written comments regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document by using the World Wide Web (WWW). For WWW access, connect to CBER at ''http://www.fda.gov/cber/guidelines.htm''.

Dated: December 28, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–30 Filed 1–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection; Comment Request; Physician Survey on Cancer Susceptibility Testing

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH), the National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Physicians Survey on Inherited Cancer Susceptibility Testing. Type of Information Collection Request: New. Need and Use of Information Collection: The Physicians Survey on Inherited Cancer Susceptibility Testing will be used by the National Cancer Institute to establish baseline information on the prevalence of genetic testing for cancer susceptibility among primary care physicians in the United States. The survey will assess whether there are statistically significant differences in (1) self-reported knowledge, current use of, and future intentions to use genetic testing for cancer susceptibility, and (2) perceptions of barriers to testing, among primary care physicians by their type and location of practice, and recency of training. Primary care physicians (internists, pediatricians, family and general practitioners) will also be compared with specialty groups (gastroenterologists, surgeons, urologists and oncologists) with respect to their

use, attitudes toward, and knowledge of, genetic testing for cancer susceptibility. A questionnaire will be administered by mail, telephone, facsimile and Internet, using a nationally representative sample of physicians. The study physicians will select their preferred response mode. Frequency of Response: One-time study. Affected Public: Medical community. Type of Respondents: Primary care and specialty physicians with active licenses to practice medicine in the U.S. The annualized cost to respondents is estimated at $33,750. Burden estimates are presented here:

Questionnaire	Estimated # respondents	Estimated # responses/respondent	Average burden hours per response	Estimated total annual burden hours
Primary care physicians	1,096	1	0.250	274
Specialty physicians	254	1	0.250	64
Total	.....	.....	.....	338

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) 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) 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) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT:

To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Louise Wideroff or Andrew Freedman, Epidemiologists, National Cancer Institute, EPN 313, Executive Boulevard MSC 7334, Bethesda, Maryland 20892–7344, Telephone (301) 435–6823 or (301) 435–6819, FAX (301) 435–3710, or E-mail your request, including your address, to *wideroff@nih.gov* or Andrew__Freedman@nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before March 8, 1999.

Dated: December 29, 1998.

Reesa Nichols,

OMB Project Clearance Liaison.

[FR Doc. 99–108 Filed 1–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 662b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 4, 1999.
Time: 1:00 PM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: David Monsees, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7816, Bethesda, MD 20892, (301) 435–0684.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 HPD(4).
Date: January 5, 1999.
Time: 2:00 PM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: David Monsees, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7816, Bethesda, MD 20892, (301) 435–0684.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 HPD(4).
Date: January 5, 1999.
Time: 2:00 PM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Richard Panniers, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 6, 1999.
Time: 1:30 PM to 2:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: David Monsees, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7816, Bethesda, MD 20892, (301) 435–0684.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–MEP–04S.
Date: January 6, 1999.
Time: 2:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact: Person Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 7, 1999.

Time: 1:30 to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David Monsees, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7816, Bethesda, MD 20892, (301) 435–0684.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 BM–25.

Date: January 8, 1999.

Time: 11:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William C. Branche, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 8, 1999.

Time: 2:00 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Perkins, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 29, 1998.

LaVerne Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–107 Filed 1–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Preclinical Toxicology of Chemopreventive Agents.

Date: January 29, 1999.

Time: 10:00 AM to 12:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Executive Plaza North, 6130 Executive Boulevard, Room 640, Rockville, MD 20852.

Contact Person: Wilna A. Woods, Deputy Chief, Special Review, Referral and Research Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Rockville, MD 20852, (301) 496–7903.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 28, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–102 Filed 1–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Efficacy of Mammography Screening Ages 40–49 Eurotrial 40.

Date: January 12, 1999.

Time: 12:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Blvd. 6th Floor, Rockville, MD 20852.

Contact Person: Ray Bramhall, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Blvd, Rockville, MD 20892, (301) 496–3428.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 28, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–103 Filed 1–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Establishment of Post Chernobyl NIS Thyroid Banks.

Date: January 7, 1999.

Time: 1:00 to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Boulevard, Rockville, MD 20852.

Contact Person: C.M. Kerwin, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN–609, Rockville, MD 20892–7405, 301/496–7421.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 28, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–104 Filed 1–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Efficacy Studies of Chemopreventive Agents I Animal Models.

Date: January 27, 1999.

Time: 9:30 a.m. to 12:00 p.m.

Agenca: To review and evaluate contract proposals.

Place: 6130 Executive Blvd., 6th Floor, Rockville, MD 20852.

Contact Person: Wilna A. Woods, Deputy Chief, Special Review, Referral and Research Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Rockville, MD 20852, (301) 496–7903.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 29, 1998.

LaVerne Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–105 Filed 1–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: January 14, 1999.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd. Suite 350, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Andrew P. Mariani, Chief, Scientific Review Branch, 6120 Executive Blvd, Suite 350, Rockville, MD 20892, 301/496–5561.

(Catalogue of Federal Domestic Assistance Program Nos. 93. 867, Vision Research, National Institutes of Health, HHS)

Dated: December 29, 1998.

LaVerne Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–106 Filed 1–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Proposed Project: Evaluation of Treatment Improvement Protocol (TIP) No. 24—New—Since 1992, the Center for Substance Abuse Treatment (CSAT) has published Treatment Improvement Protocols (TIPs), which provide administrative and clinical practice guidance to the substance abuse treatment field. Up to six special studies will be conducted to evaluate the impact of TIPs. The first of these will evaluate the dissemination and impact of TIP No. 24—Guide to Substance Abuse Services for Primary Care Clinicians—on the clinical practices of primary care physicians and related health professionals. The information contained in the document has been published in three alternative lengths and formats: the complete TIP, a Concise Desk Reference, and a Pocket Reference Guide.

This study will examine the likely usefulness for primary care clinicians of the content of TIP No. 24, published in 1998, and will compare the utility of the three alternative lengths and formats for presenting the information. All three versions of the TIP No. 24 material will be mailed to the leadership of 24 professional health organizations representing primary health care professionals throughout the Nation; a sample of the leadership will then be surveyed and asked to assess the content of the materials and the utility of each of the three versions.

The study will use a one-group posttest-only design. Primary objectives of the study are to determine: (1) the

leadership's personal assessment of the usefulness of the information and the three versions; (2) the leadership's assessment of the value of the information and the alternative versions to the members they represent; (3) the leadership's awareness of the TIP series in general; and (4) the extent to which leaders are likely to encourage their respective members to obtain and use at least one of the three versions of the information. All data will be collected using mailed questionnaires and followup telephone calls if necessary. The estimated annualized burden for a 1-year data collection period is summarized below.

	Number of respondents	Number of responses/ respondent	Hours/response	Total burden hours
Opinion/leader-ship group	440	1	.39	172

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 29, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–39 Filed 1–4–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Frederick A. Pontillas, Baton Rouge, LA, PRT–005182

The applicant requests a permit to import blood from wild and captive born Philippine crocodile (*Crocodylus mindorensis*) from the Philippines for the purpose of enhancement of the survival of the species through scientific research.

Applicant: Feld Entertainment, Inc, Vienna, VA, PRT–006165

The applicant requests a permit to import one captive born male Asian Elephant (*Elephas maximus*) from African Lion Safari, Ontario, Canada, for the purpose of enhancement of the species through propagation.

Applicant: Terry Lee, Bristol, VA, PRT–006331

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Buenos Aires National Wildlife Refuge, Fish and Wildlife Service, Sasabe, AZ, PRT–006341

The applicant requests a permit to import masked bobwhite (*Colinus virginianus ridgwayi*) taken from the wild on the ranch of Gustavo Camou Luders, Hermosillo, Mexico, for the purpose of enhancement of the survival of the species through captive breeding and release under the established recovery plan for the species. This notification covers activities by this applicant for a period of 5 years.

Applicant: End of the Road Bird Ranch, Millington, MI, PRT–006340

The applicant requests a permit to import two captive-bred white-eared pheasants (*Crossoptilon crossoptilon*) from the Old House Bird Gardens, Reading, England, for the enhancement of the survival of the species through captive propagation.

Applicant: Cincinnati Zoo and Botanical Garden, Cincinnati, OH, PRT–005734

The applicant requests to import three captive born male giant Japanese salamanders (*Andrias japonicus*) from the AZA Zoological Park, Hiroshima, Japan, for the enhancement of the survival of the species through captive propagation.

Applicant: Cincinnati Zoo and Botanical Garden, Cincinnati, OH, PRT–005642

The applicant requests to import one captive born male cheetah (*Acinonyx jubatus*) from the Wassenaar Wildlife Breeding Center, Holland, for the enhancement of the survival of the species through captive propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: December 29, 1998.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–52 Filed 1–4–99; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–941–5700–00]

Information Access Center: Business Hours Changed

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: To improve our business practices and continue providing quality service to our customers, the California State Office Information Access Center's (Public Room) business hours will change. The new hours will be 8:30 am to 4:30 pm.

EFFECTIVE DATE: January 11, 1999.

ADDRESSES: 2135 Butano Drive, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Gary Catledge at (916) 978–4400, Fax (916) 978–4416 or e-mail: <gcatledge@ca.blm.gov>.

Dated: December 22, 1998.

Elaine Marquis-Brong,

Deputy State Director, Division of Support Services.

[FR Doc. 99–123 Filed 1–4–99; 8:45 am]

BILLING CODE 4310–40–M

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 December 25, 1998. 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 January 20, 1999.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Benton County

Wee Pine Knot (Benton County MRA), 319 Spring St., Sulphur Springs, 98001632

Faulkner County

Little, J.E., House, 427 Western Ave., Conway, 98001631

CALIFORNIA

Los Angeles County

Warner Brothers Theatre, 478 W. 6th St., San Pedro, 98001633

Sacramento County

Winter House, 2324 and 2326 H St., Sacremento, 98001634

COLORADO

Arapahoe County

Geneva House, 2305 W. Berry Ave., Littleton, 98001635

Denver County

Arcanum Apartments, 1904 Logan St., Denver, 98001629

MISSOURI

Jackson County

Richards and Conover Hardware Company Building, 5200 W. 5th St., Kansas City, 98001636

St. Clair County

Osceola Public School Building, Jct. of Fifth and Pine Sts., Osceola, 98001638

NEW JERSEY

Passaic County

Dundee Canal Industrial Historic District, George St., N along Dundee Canal, approx. 1.2 mi. to headgates opposite E. Clifton Ave., Passaic vicinity, 98001640

Warren County

Port Colden Historic District, Roughly along Port Colden Rd., Lock St., NJ 57, and Morris Canal Terrace, Washington Township vicinity, 98001639

OHIO

Franklin County

Nafzger—Miller House, 110 Mill St., Gahanna, 98001641

Stark County

Martin, Brooke and Anna E. House (Architecture of Guy Tilden in Canton, 1885—1905, TR), 1627 Market Ave. N., Canton, 98001642

Warren County

Waynesville Engine House and Lockup, 260 Chapman St., Waynesville, 98001643

SOUTH CAROLINA

Charleston County

Wilkinson—Boineau House, 5185 SC 174, Adams Run, 98001644

Pickens County

Easley High School Auditorium, 112 Russell St., Easley, 98001646

Sumter County

Temple Sinai, 11 Church St., Sumter, 98001645

VIRGINIA

Arlington County

Buckingham Historic District, Roughly bounded by N. 5th, N. Oxford, and N. 2nd Sts., and N. Glebe Rd., Arlington, 98001649

Culpeper County

Signal Hill, 16190 Germanna Hwy., Culpeper vicinity, 98001650

Isle Of Wight County

Oak Creek, 34457 Lee's Mill Rd., Franklin vicinity, 98001648

Orange County

Orange Commercial Historic District, Roughly along Madison and Main Sts., Orange, 98001651

[FR Doc. 99–127 Filed 1–4–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1964–98; AG Order No. 2201–98]

RIN 1115–AE26

Designation of Honduras Under Temporary Protected Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice designates Honduras for the Temporary Protected Status (TPS) program. Under section 244(b)(1) of the Immigration and Nationality Act, as amended (the Act), the Attorney General is authorized to grant TPS in the United States to eligible nationals of designated foreign states or parts of such states (or to eligible aliens who have no nationality and who last habitually resided in such designated states) upon finding that such states are experiencing ongoing armed conflict, environmental disaster, or other extraordinary and temporary conditions.

EFFECTIVE DATES: This designation is effective on January 5, 1999 and will remain in effect until July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Residence and Status Branch, Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION:

What is Temporary Protected Status?

The TPS statute (section 244 of the Immigration and Nationality Act) grants eligible nationals of designated countries temporary immigration status. TPS beneficiaries are granted a stay of removal and work authorization for the designated TPS period and for any extensions of the designation. TPS does not lead to permanent resident status.

Why Is Honduras Being Designated for the TPS Program?

Hurricane Mitch swept through Central America causing severe flooding and associated damage in Honduras. Based on a thorough review by the Departments of State and Justice, the Attorney General finds that, due to the environmental disaster and substantial disruption of living conditions caused by Hurricane Mitch, Honduras is unable, temporarily, to handle adequately the return of Honduran nationals.

Who Is Eligible for Honduran TPS?

Nationals of Honduras (or aliens having no nationality who last

habitually resided in Honduras) who have been ''continuously physically present'' in the United States since January 5, 1999 and have ''continuously resided'' in the United States since December 30, 1998, may apply for TPS within the registration period which begins on January 5, 1999 and ends on July 5, 1999.

Any national of Honduras who has already applied for, or plans to apply for, asylum, but whose asylum application has not yet been approved, may also apply for TPS. An application for TPS does not preclude or adversely affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an alien's ability to register for TPS, although the grounds of denial may also lead to denial of TPS. For example, an alien who has been convicted of an aggravated felony is not eligible for asylum or TPS.

An alien who is granted TPS is eligible to register for any extension of the TPS program that may be made. However, nationals of Honduras who do not file a TPS application during the initial registration period will have to satisfy the requirements for late initial registration under 8 CFR 244.2(f)(2) in order to be eligible for TPS registration during any extension of designation. The requirements for late initial registration specify (1) that the applicant must have been in valid immigrant or nonimmigrant status during the initial registration period, (2) or had an application for relief from removal or change of status pending or under review during the initial registration period, and (3) must register no later than sixty (60) days from the expiration of such status or pendency of such application.

How Do I Register for TPS?

If	Then
You are a national of Honduras (or an alien having no nationality who last habitually resided in Honduras) registering for TPS and employment authorization.	You must complete and file: (1) Form I–821, Application for Temporary Protected Status ($50 filing fee), (2) Form I–765, Application for Employment Authorization ($100 filing fee), and (3) $25 Fingerprint Fee
You already have employment authorization or do not require employment authorization.	You must complete and file: (1) Form I–821 with $50 filing fee, (2) Form I–765, Application for Employment with no filing fee, and (3) $25 Fingerprint Fee
You are registering for TPS and employment authorization and are requesting a fee waiver.	You must complete and file: (1) Appropriately documented fee waiver request and requisite affidavit (and any other information) in accordance with 8 CFR 244.20, (2) Form I–821, and (3) Form I–765. (4) $25 Fingerprint Fee. There is no fee waiver for the Fingerprint Fee.

To register for TPS for all conditions described in the above chart, you must include two identification photographs (1½″ x 1½″) and supporting evidence as provided in 8 CFR 244.9 (evidence of identity and nationality, and proof of residence).

Where Should I Register for TPS?

Nationals of Honduras (or eligible aliens who have no nationality and who last habitually resided in Honduras) must register for TPS by submitting an application to the INS Service Center that has jurisdiction over where the applicant lives.

If you live in Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, West Virginia, or in the U.S. Virgin Islands, mail your application to:

Vermont Service Center, ATTN: TPS, 75 Lower Welden Street, St. Albans, VT 05479.

If you live in Arizona, California, Guam, Hawaii or Nevada, mail your application to:

California Service Center, ATTN: TPS, 24000 Avila Road, 2nd Floor, Laguna Niguel, CA 92677–8111.

If you live in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, mail your application to:

Texas Service Center, P.O. Box 850997, Mesquite, TX 75185–0997.

If you live elsewhere in the United States, please mail your application to:

Nebraska Service Center, P.O. Box 87821, Lincoln, NE 68501–7821.

Notice of Designation of Honduras Under Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244 of the Immigration and Nationality Act, as amended (8 U.S.C. 1254a), I find, after consultation with the appropriate agencies of the Government, that:

(1) There exists an environmental disaster in Honduras, and, due to this disaster, which has substantially disrupted living conditions, Honduras is unable, temporarily, to handle adequately the return of Honduran nationals (or aliens having no nationality who last habitually resided in Honduras);

(2) Honduras officially has requested that it be granted TPS designation; and

(3) Permitting nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) to remain temporarily in the United States is not contrary to the national interest of the United States.

Accordingly, it is ordered as follows:

(1) Honduras is designated for TPS under section 244(b)(1)(B) of the Act. Nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who have been ''continuously physically present'' since January 5, 1999 and have ''continuously resided'' in the United States since December 30, 1998, may apply for TPS within the registration period which begins on January 5, 1999 and ends on July 5, 1999.

(2) I estimate that there are no more than 100,000 nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) in the United States who are eligible for TPS.

(3) Except as may otherwise be provided, applications for TPS by nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) must be filed pursuant to the provisions of 8 CFR part 244. Aliens who wish to apply for TPS must file an Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, during the registration period, which begins on January 5, 1999 and will remain in effect until July 5, 1999.

(4) A fee prescribed in 8 CFR 103.7(b)(1) (fifty dollars ($50)) will be charged for each Application for Temporary Protected Status, Form I–821, filed during the registration period.

(5) A fee prescribed in 8 CFR 103.7(b)(1) (one hundred dollars ($100)) will be charged for each Application for Employment Authorization, Form I–

765, filed by an alien requesting employment authorization. An alien who already has employment authorization or who does not wish to request employment authorization must nevertheless file Form I–765, together with Form I–821, for data gathering purposes. In such cases, however, no fee needs to be submitted with Form I–765.

(6) A fee prescribed 8 CFR 103.7(b)(1) (twenty-five dollars ($25)) for fingerprinting must be submitted with the Form I–821.

(7) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before July 5, 2000, the conditions in Honduras to determine whether the conditions for designation of Honduras under the TPS program continue to exist. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. If there is an extension of designation, late initial registration for TPS shall be allowed only pursuant to the requirements of 8 CFR 244.2(f)(2).

Where Can I Find Information About the TPS Program?

Information concerning the TPS program for nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) will be available at the Service Internet Website, located at *www.ins.usdoj.gov*, the Application Support Center Information Line, at 1–888–557–5398, and at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: December 31, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–34849 Filed 12–31–98; 3:02 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1965–98; AG Order No. 2202–98]

RIN 1115–AE26

Designation of Nicaragua Under Temporary Protected Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice designates Nicaragua for the Temporary Protected Status (TPS) program. Under section 244(b)(1) of the Immigration and Nationality Act, as amended (the Act), the Attorney General is authorized to grant TPS in the United States to eligible nationals of designated foreign states or parts of such states (or to eligible aliens who have no nationality and who last habitually resided in such designated states) upon finding that such states are experiencing ongoing armed conflict, environmental disaster, or other extraordinary and temporary conditions.

EFFECTIVE DATES: This designation is effective on January 5, 1999 and will remain in effect until July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Residence and Status Branch, Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION:

What Is Temporary Protected Status?

The TPS statute (section 244 of the Immigration and Nationality Act) grants eligible nationals of designated countries temporary immigration status. TPS beneficiaries are granted a stay of removal and work authorization for the designated TPS period and for any extensions of the designation. TPS does not lead to permanent resident status.

Why Is Nicaragua Being Designated for the TPS Program?

Hurricane Mitch swept through Central America causing severe flooding and associated damage in Nicaragua. Based on a thorough review by the Departments of State and Justice, the Attorney General finds that, due to the environmental disaster and substantial disruption of living conditions caused by Hurricane Mitch, Nicaragua is unable, temporarily, to handle adequately the return of Nicaraguan nationals.

Who Is Eligible for Nicaraguan TPS?

Nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who have been ''continuously physically present'' since January 5, 1999 and have ''continuously resided'' in the United States since December 30, 1998, may apply for TPS within the registration period which begins on January 5, 1999 and ends on July 5, 1999.

Any national of Nicaragua who has already applied for, or plans to apply for, asylum, but whose asylum application has not yet been approved, may also apply for TPS. An application for TPS does not preclude or adversely affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an alien's ability to register for TPS, although the grounds of denial may also lead to denial of TPS. For example, an alien who has been convicted of an aggravated felony is not eligible for asylum or TPS.

An alien who is granted TPS is eligible to register for any extension of the TPS program that may be made. However, nationals of Nicaragua who do not file a TPS application during the initial registration period will have to satisfy the requirements for late initial registration under 8 CFR 244.2(f)(2) in order to be eligible for TPS registration during any extension of designation. The requirements for late initial registration specify:

(1) that the applicant must have been in valid immigrant or nonimmigrant status during the initial registration period, or

(2) had an application for relief from removal or change of status pending or under review during the initial registration period, and

(3) must register no later than sixty (60) days from the expiration of such status or pendency of such application.

How Do I register for TPS?

If	Then
You are a national of Nicaragua (or an alien having no nationality who last habitually resided in Nicaragua) registering for TPS and employment authorization.	You must complete and file: (1) Form I–821, Application for Temporary Protected Status ($50 filing fee), (2) Form I–765, Application for Employment Authorization ($100 filing fee), and (3) $25 Fingerprint Fee
You already have employment authorization or do not require employment authorization.	You must complete and file: (1) Form I–821 with $50 filing fee, (2) Form I–765, Application for Employment with no filing fee, and (3) $25 Fingerprint Fee

If	Then
You are registering for TPS and employment authorization and are requesting a fee waiver.	You must complete and file: (1) Appropriately documented fee waiver request and requisite affidavit (and any other information) in accordance with 8 CFR 244.20, (2) Form I–821, and (3) Form I–765. (4) $25 Fingerprint Fee. There is no fee waiver for the Fingerprint Fee.

To register for TPS for all conditions described in the above chart, you must include two identification photographs (1½'' x 1½'') and supporting evidence as provided in 8 CFR 244.9 (evidence of identity and nationality, and proof of residence).

Where Should I Register for TPS?

Nationals of Nicaragua (or eligible aliens who have no nationality and who last habitually resided in Nicaragua) must register for TPS by submitting an application to the INS Service Center that has jurisdiction over where the applicant lives.

If you live in Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, West Virginia, or in the U.S. Virgin Islands, mail your application to:

Vermont Service Center, ATTN: TPS, 75 Lower Welden Street, St. Albans, VT 05479.

If you live in Arizona, California, Guam, Hawaii or Nevada, mail your application to:

California Service Center, ATTN: TPS, 24000 Avila Road, 2nd Floor, Laguna Niguel, CA 92677–8111.

If you live in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, mail your application to:

Texas Service Center, P.O. Box 850997, Mesquite, TX 75185–0997.

If you live elsewhere in the United States, please mail your application to:

Nebraska Service Center, P.O. Box 87821, Lincoln, NE 68501–7821.

As a Nicaraguan National, Can I File an Application for Adjustment of Status to That of Lawful Permanent Resident Under the Nicaraguan Adjustment and Central American Relief Act (NACARA), and Also File an Application for TPS?

Yes. Nicaraguans can apply for either TPS or adjustment under section 202 of NACARA, or both. The filing of an application for TPS or a grant of TPS status will not have any adverse effect on applications for relief under NACARA.

What Is the Difference Between These Two Programs?

Temporary Protected Status is, as its name implies, temporary protection from removal during the designation period(s). It is not a permanent entitlement to remain in the country or permanent relief from removal. Under section 244(b)(1) of the Act, the publication of this notice permits nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who have been ''continuously physically present'' since January 5, 1999 and have ''continuously'' resided in the United States since December 30, 1998 to apply for TPS within the registration period which begins on January 5, 1999 and ends on July 5, 1999. A national of Nicaragua granted TPS can lawfully remain in the United States during the designated period and is entitled to employment authorization.

In contrast to TPS, section 202 of NACARA provides an avenue for certain Nicaraguans and their Nicaraguan and Cuban national dependents to apply for permanent relief from removal. The interim rule governing applications for adjustment to permanent resident status under section 202 of NACARA was published in the **Federal Register** on May 21, 1998, at 63 FR 27823. A Nicaraguan is eligible to adjust his or her status to that of lawful permanent resident if:

(1) it can be established that he or she has been continuously physically present in the United States since December 1, 1995 (not counting absences totaling 180 days or less);

(2) he or she is not inadmissible to the United States under all provisions of section 212(a) of the Act not excepted by section 202(a)(1)(B) of NACARA; and

(3) he or she applies for such adjustment prior to April 1, 2002.

If an adjustment application under section 202 of NACARA is approved, the applicant will receive lawful permanent resident (LPR) status. A person who is an LPR may apply to become a United States citizen after the requisite time.

Nicaraguans who are interested in either or both programs are urged to review the specific eligibility and filing requirements for those programs before applying.

Notice of Designation of Nicaragua Under Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244 of the Immigration and Nationality Act, as amended (8 U.S.C. 1254a), I find, after consultation with the appropriate agencies of the Government, that:

(1) There exists an environmental disaster in Nicaragua, and, due to this disaster, which has substantially disrupted living conditions, Nicaragua is unable, temporarily, to handle adequately the return of Nicaraguan nationals (or aliens having no nationality who last habitually resided in Nicaragua);

(2) Nicaragua officially has requested that it be granted a TPS designation; and

(3) Permitting nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) to remain temporarily in the United States is not contrary to the national interest of the United States.

Accordingly, it is ordered as follows:

(1) Nicaragua is designated for TPS under section 244(b)(1)(B) of the Act. Nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who have been ''continuously physically present'' since January 5, 1999 and have ''continuously resided'' in the United States since December 30, 1998, may apply for TPS within the registration period which begins on January 5, 1999 and ends on July 5, 1999.

(2) I estimate that there are no more than 45,000 to 70,000 nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) in the United States who are eligible for TPS.

(3) Except as may otherwise be provided, applications for TPS by nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) must be filed pursuant to the provisions of 8 CFR part 244. Aliens who wish to apply for TPS must file an Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, during the registration period, which begins on January 5, 1999 and will remain in effect until July 5, 1999.

(4) A fee prescribed in 8 CFR 103.7(b)(1) (fifty dollars ($50)) will be

charged for each Application for Temporary Protected Status, Form I–821, filed during the registration period.

(5) A fee prescribed in 8 CFR 103.7(b)(1) (one hundred dollars ($100)) will be charged for each Application for Employment Authorization, Form I–765, filed by an alien requesting employment authorization. An alien who already has employment authorization or who does not wish to request employment authorization must nevertheless file Form I–765, together with Form I–821, for data gathering purposes. In such cases, however, no fee needs to be submitted with Form I–765.

(6) A fee prescribed in 8 CFR 107.7(b)(1) (twenty-five dollars ($25)) for fingerprinting must be submitted with the Form I–821.

(7) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before July 5, 2000, the conditions in Nicaragua to determine whether the conditions for designation of Nicaragua under the TPS program continue to exist. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. If there is an extension of designation, late initial registration for TPS shall be allowed only pursuant to the requirements of 8 CFR 244.2(f)(2).

Where Can I Obtain Information About the TPS program?

Information concerning the TPS program for nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) will be available at the Service Internet Website, located at *www.ins.usdoj.gov*, the Application Support Center Information Line, at 1–888–557–5398, and at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: December 31, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–34848 Filed 12–31–98; 3:02 pm]

BILLING CODE 4410–10–P

PAROLE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 9:30 a.m., Wednesday, January 6, 1999.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting: Appeals to the Commission involving approximately two cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: December 30, 1998.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 98–34838 Filed 12–31–98; 10:27am]

BILLING CODE 4410–31–M

PAROLE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 10:30 a.m., Wednesday, January 6, 1999.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Proposed Amendments to the Interim Regulations for D.C. Code Prisoners. Amendments to the following regulations will be discussed:

(a) § 2.76: Reduction in minimum sentence.

(b) D.C. Youth Rehabilitation Act:

§ 2.71: Application for parole;
§ 2.75: Reconsideration proceedings;
§ 2.87: Reparole.

(c) ''Attempted murder'' in Category III of the D.C. Guidelines.

(d) § 2.80: ''Current offense'' for probation violators.

(e) Medical and geriatric parole:

§ 2.77: Medical parole;
§ 2.78: Geriatric parole;

(f) § 2.63: Rewarding Assistance to Law Enforcement.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: December 30, 1998.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 98–34839 Filed 12–31–98; 10:31 am]

BILLING CODE 4410–31–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

December 29, 1998.

Time and Date: 11:00 a.m., Wednesday, January 6, 1999

Place: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

Status: Open

Matters to be Considered: The Commission will consider and act upon the following:

1. *Secretary of Labor* v. *Capitol Cement Corp.*, Docket Nos. WEVA 95–194–M, etc. (Issues include whether the judge denied Capitol due process by conducting a hearing when a witness asserted the Fifth Amendment privilege against self-incrimination; properly concluded that violations of 30 C.F.R. §§ 56.12016 and 56.15005 by Capital resulted from its unwarrantable failure to comply with the standards; and properly concluded that the negligence of two supervisors is imputable to Capitol for civil penalty purposes.)

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/202 708–9300 for TDD Rely/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 98–34845 Filed 12–31–98; 1:38 am]

BILLING CODE 6735–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

December 29, 1998.

Time and Date: 10:00 a.m., Wednesday, February 3, 1999

Place: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC

Status: Open

Matters to be Considered: The Commission will hear oral argument on the following:

1. *Secretary of Labor* v. *Windsor Coal Co.*, Docket No. WEVA 97–95 (Issues include whether substantial evidence supports the judge's determination that Windsor's violation of 30 CFR § 75.400 was not the result of its unwarrantable failure.)

Time and Date: 2:00 p.m., Wednesday, February 3, 1999

Place: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC

Status: Closed [Pursuant to 5 U.S.C. 552b(c)(10)]

Matters to be Considered: It was determined by a unanimous vote of the Commission that the Commission consider and act upon the following in closed session:

1. *Secretary of Labor* v. *Windsor Coal Co.*, Docket No. WEVA 97–95 (*See* oral argument listing, *supra,* for issues.)

Any person attending oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 1706.150(a)(3) and 2706.160(d).

Contact Person For More Info: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 98–34846 Filed 12–31–98; 1:57 pm]

BILLING CODE 6735–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before February 19, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Modern Records Programs (NWM), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Bureau of Animal Industry (N1–17–98–1, 5 items, 2 temporary items). Records stored at the Washington National Records Center relating to internal office administration accumulated by two Bureau of Animal Industry components prior to 1960. Records document such matters as personnel actions, procurement, budgeting, and time and attendance. Records that document substantive matters, such as meat inspection regulations, the development of serums for animals, and efforts to eradicate foot and mouth disease, are proposed for permanent retention.

2. Department of the Army, Agency-wide (N1–AU–96–6, 23 items, 16 temporary items). Raw data created when samples are tested during environmental restoration activities. Management reports summarizing these data are proposed for permanent retention. This schedule also lengthens the retention periods of contracts and financial records previously scheduled for disposal and proposes the permanent retention of restoration project files, agreements and property ownership records.

3. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–99–3, 38 items, 16 temporary items). Older records created by various NOAA organizational units stored at the Washington National Records Center. Files proposed for disposal date primarily from 1944–1990 and include international seismograms, world registers, aerial photographs, leveling records, materials relating to grants, loans, and subsidies, committee management files, Global Atmospheric Research Program (GARP) and Global Atlantic Tropical Experiment (GATE) magnetic radar tapes and related data

sheets, quality control forms, project working papers, drafts of reports and scholarly papers, advisory committee files of the Federal Coordinator for Meteorology, cooperative training agreements, satellite monitoring operations records, data processing planning records, systems testing and evaluation records, and materials created by other federal agencies received by NOAA from the Secretary of Commerce. Files proposed for permanent retention include bench mark descriptions, mapping surveys, Great Lakes surveys, tide staff readings, survey project case files, correspondence files of high level officials, directives and issuances, budget estimates and projections, Alaska fishing statistics, grant correspondence files, bilateral relations files, international cooperative project files, publications, ship engineering and architectural drawings, and automation planning files.

4. Department of Health and Human Services, Administration on Aging (N1–439–99–1, 1 item, 1 temporary item). User access log of visits to the agency's World Wide Web site. The logs record the visitor's origin, time of day, length of stay, and activities while at the site.

5. Department of Health and Human Services, Health Care Financing Administration (N1–440–99–1, 1 item, 1 temporary item). User access log of visits to the agency's World Wide Web site. The logs record the visitor's origin, time of day, length of stay, and activities while at the site.

6. Department of Health and Human Services, National Institutes of Health (N1–443–99–1, 1 item, 1 temporary item). User access log of visits to the agency's World Wide Web site. The logs record the visitor's origin, time of day, length of stay, and activities while at the site.

7. Department of Health and Human Services, Office of the Secretary (N1–468–99–1, 7 items, 6 temporary items). Electronic images of incoming correspondence, electronic calendars containing scheduling information which are created in electronic form and printed out in final form, declined and canceled invitations, duplicate copies of accepted invitations, and government-issue and commercial calendars maintained for administrative use. Official schedules, talking points, accepted invitations, travel agendas, meeting agendas, handwritten notes and comments, logs, briefing books, issue papers, and records documenting telephone calls and other activities of the Secretary are proposed for permanent retention.

8. Department of Health and Human Services, Program Support Center (N1–468–99–2, 1 item, 1 temporary item). User access log of visits to the agency's World Wide Web site. The logs record the visitor's origin, time of day, length of stay, and activities while at the site.

9. Department of Health and Human Services, Agency for Health Care Policy and Research (N1–510–99–1, 1 item, 1 temporary item). User access log of visits to the agency's World Wide Web site. The logs record the visitor's origin, time of day, length of stay, and activities while at the site.

10. Department of Health and Human Services, Health Resources and Services Administration (N1–512–99–1, 1 item, 1 temporary item). User access log of visits to the agency's World Wide Web site. The logs record the visitor's origin, time of day, length of stay, and activities while at the site.

11. Department of Health and Human Services, Indian Health Service (N1–513–99–1, 1 item, 1 temporary item). User access log of visits to the agency's World Wide Web site. The logs record the visitor's origin, time of day, length of stay, and activities while at the site.

12. Department of the Interior, Bureau of Land Management (N1–49–98–1, 2 items, 2 temporary items). Electronic copies of records relating to the wild horse and burro adoption program created using electronic mail and word processing. This schedule also increases the retention period for recordkeeping copies, which were previously approved for disposal.

13. Department of State, Office of the Secretary of State (N1–59–98–2, 4 items, 3 temporary items). Files relating to declined invitations including electronic copies of records created using electronic mail and word processing. Also proposed for disposal are electronic copies of records relating to events attended by the Secretary of State that are created using electronic mail and word processing. Recordkeeping copies are proposed for permanent retention.

14. Commission to Study Capital Budgeting (N1–220–99–2, 6 items, 4 temporary items). Audio tapes of meetings for which written transcripts were created and web site and related design and management records. Also proposed for disposal are electronic copies of records created using electronic mail and word processing. Transcripts of meetings, reports, general correspondence, and other program records are proposed for permanent retention.

15. Federal Communications Commission, Mass Media Bureau (N1–173–98–2, 2 items, 1 temporary item). Licensing files for deleted broadcasting stations that are not full service, such as low power television stations. Files pertaining to full service radio and television stations are proposed for permanent retention.

16. Federal Communications Commission (N1–173–98–9, 25 items, 13 temporary items). Older records of the FCC stored at the Washington National Records Center. The files proposed for disposal date primarily from 1934–1974 and consist of such records as duplicate copies of dockets, international tariff charges, lists of station change notices, telephone company property accounting reports, surveys of political broadcasting activities, educational television grant applications, monthly budget reports, docket reference materials and subject files, monthly telephone company revenue reports, temporary broadcasting authorizations, and mobile radio license card indexes. Investigation files and reports, annual management surveys, subject files of high level officials, budget estimates and justifications, technical research reports, annual reports of telephone companies, deleted foreign broadcast license files, and experimental television applications are proposed for permanent retention.

Dated: December 22, 1998.

Michael J. Kurtz,

Assistant Archivist for Record Services, Washington, DC.

[FR Doc. 99–59 Filed 1–4–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for the Coordination and Production of Videotapes of Group Discussions Among Artists, Scientists, Astronauts and Others About the Creation of Art (Dance, Music, Design, etc.) on Mars for Use by Schools Across the Country as Part of the National Mars Millennium Project

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement to coordinate and videotape five to seven sessions of artists, scientists, engineers and astronauts conversing about the creative process and environmental conditions on Mars. Discussions will focus on how the conditions might influence the art

produced there, and the design of livable structures, among other issues. The videotapes will be used in pre K–12 schools across the United States as part of the Mars Millennium Project. The project as envisioned will include: development of script format, coordinating scheduling and travel arrangements for participants, arranging production and post production, and providing up to 200,000 copies of the material produced. Those interested in receiving the Solicitation should reference Program Solicitation PS 99–02 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 99–02 is scheduled for release approximately January 25, 1999 with proposals due on February 22, 1999.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW., Washington, DC 20506 (202/682–5482).

Larry Baden,

Deputy Chairman, Management and Budget.

[FR Doc. 99–34717 Filed 1–4–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Comment Request: National Science Foundation Proposal/Award Information—Grant Proposal Guide

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

DATES: Written comments should be received by March 8, 1999 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to splimpto@nsf.gov.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 306–1125 x 2017 or send e-mail to splimpto@nsf.gov. 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:

Title Of Collection: ''National Sciences Foundation Proposal/Award Information-Grant Proposal Guide''.

OMB Approval Number: 3145–0058.

Expiration Date of Approval: September 30, 1999.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The missions of NSF are to: increase the Nation's base of scientific and engineering knowledge and strengthen its ability to support research in all areas of science and engineering; and promote innovative science and engineering education programs that can better prepare the Nation to meet the challenges of the future. The Foundation is committed to ensuring the Nation's supply of scientists, engineers, and science educators. In its role as leading Federal supporter of science and engineering, NSF also has an important role in national science policy planning.

Use of the Information: The regular submission of proposals to the Foundation is part of the collection of information and is used to help NSF fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 30,000 proposals annually for new projects, and makes approximately 10,000 new awards. Support is made primarily through grants, contracts, and other agreements awarded to approximately 2,800 colleges, universities, academic consortia, nonprofit institutions, and small businesses. The awards are based mainly on evaluations of proposal merit submitted to the Foundation (proposal review is cleared under OMB Control No. 3145–0060).

The Foundation has a continuing commitment to monitor the operations of its information collection to identify and address excessive reporting burdens as well as to identify any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s).

Burden on the Public: The Foundation estimates that an average of 120 hours is expended for each proposal submitted. An estimated 38,000 proposals are expected during the course of one year. These figures compute to an estimated 4,560,000 public burden hours annually.

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 of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: December 29, 1998.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 99–25 Filed 1–4–99; 8:45 am]

BILLING CODE 7555–01–U

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of 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 should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention:

Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–306–1125 X 2017.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title: National Science Foundation Proposal Evaluation Process.

OMB Control Number: 3145–0060.

Summary of Collection: The missions of NSF are to: increase the Nation's base of scientific and engineering knowledge and strengthen its ability to support research in all areas of science and engineering; promote innovative science and engineering education programs that can better prepare the Nation to meet the challenges of the future; and promote international cooperation in science and engineering. The Foundation is also committed to ensuring the Nation's supply of scientists, engineers, and science educators. In its role as leading Federal supporter of science and engineering, NSF also has an important role in national policy planning.

The Foundation fulfills this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. This support is made primarily through grants, contracts, and other agreements awarded to over 2000 universities, colleges, academic consortia, non-profit institutions, and small business.

The Foundation relies heavily on the advice and assistance of external advisory committees, ad-hoc proposal reviewers, and other experts to ensure that the Foundation is able to reach fair and knowledgeable judgments. These scientists and educators come from colleges and universities, non-profit research and education organizations, industry, and other Government agencies.

In making its decisions on proposals, the counsel of these merit reviewers has proven invaluable to the Foundation both in the identification of meritorious projects and in providing sound basis for project restructuring.

Merit review is successful because of the thousands of experts from all fields of research who volunteer their time to evaluate and determine which proposals deserve consideration for funding. NSF program officers rely on the advice of expert reviewers to help make often-difficult decisions on how to best allocate limited resources and to target those proposals that promise to produce the most significant contributions. Review of proposals may involve large panel sessions, small groups, or use of a mail-review system. Proposals are reviewed carefully by scientists and engineers who are expert in the particular field represented by the proposal.

Need and Use of the Information: The information collected is used to support grant programs of the Foundation. The information collected on the proposal evaluation forms is used by the Foundation to determine the following criteria when awarding or declining proposals submitted to the agency: (1) Research performance competence; (2) Intrinsic merit of the research; (3) Utility or relevance of the search; and (4) Effect of the research on the infrastructure of science and engineering.

The information collected on reviewer background questionnaires is used by managers to maintain an automated database of reviewers for the many disciplines represented by the proposals submitted to the Foundation. Information collected on gender, race, ethnicity is used in meeting NSF needs for data to permit response to congressional and other queries into equity issues. These data are aslo used in the design, implementation, and monitoring of NSF efforts to increase the participation on various groups in science, engineering, and education.

Confidentiality. Verbatim but anonymous copies of reviews are sent to the principal investigators/project directors. Subject to this NSF policy and applicable laws, including the Freedom of Information Act, reviewers' comments will be given maximum protection from disclosure. While listings of panelists' names are released, the names of individual reviewers, associated with individual proposals, are not released to anyone.

Because the Foundation is committed to monitoring and identifying any real or apparent inequities based on gender, race, ethinicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s), the Foundation also collects race, ethnicity, disabilty, and gender. This information also is protected by the Privacy Act.

Description of Respondents: Nonprofit institutions; state, local or tribal governments; and business or other for-profit.

Number of Respondents: 30,000.

Frequency of Responses: On occasion.

Total Burden Hours: The Foundation estimates that anywhere from one hour to twenty hours may be required to review a proposal. It is estimated that approximately five hours are required to review an average proposal. Each proposal receives an average of three reviews, resulting in approximately 450,000 burden hours each year.

Dated: December 29, 1998.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 99–24 Filed 1–4–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Proposed Information Collection Requests

AGENCY: National Science Foundation.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Reports Clearance Officer invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995. The National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 63 FR 66585–66586 on December 2, 1998 and no comments were received. NSF will forward the proposed renewal submission to OMB for clearance with the publication of this second notice.

DATES: The Office of Management and Budget (OMB) should receive written comments by January 30, 1999.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: NATIONAL SCIENCE FOUNDATION, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, NATIONAL SCIENCE FOUNDATION,

4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or should be electronically mailed to the Internet address splimpto@nsf.gov.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton, 703–306–1125, x 2017. 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.

NSF invites public comment at the address specified above. Copies of the requests are available from Suzanne Plimpton at the address specified above.

Type of Review: New.

Title: Survey of 1996 and 1997 Research and Development Funding and Performance by Nonprofit Organizations.

Abstract: OMB clearance for the NSF Survey of Research and Development Funding and Performance by Nonprofit Organizations (NPOs) expired June 30, 1998. The proposed information clearance request is for an extension of the time period for the survey that is now in the field. The survey collects information on the science and engineering (S&E) research and development (R&D) activities of nonprofit organizations in 1996 and 1997. A prior study with similar objectives was conducted in 1973. The purposes of the study are to: (1) develop estimates of the amounts of R&D funding provided by NPOs and the types of organizations supported; (2) develop estimates of the amount of R&D performed by NPOs; and (3) develop estimates of R&D researchers' employment in NPOs.

Expected Respondents: Respondents are nonprofit organizations (NPOs) that funded and/or performed science and engineering research and development in 1996. It will be a mail survey with telephone follow-up as necessary.

NSF is proposing the time extension of one form (Form 1400, the screening survey); the change in format of one form (Form 1402, the Funders survey form); and the reduction in the number of questions in one form (Form 1401, the Performers survey form).

As the table below shows, 2,432 respondents will be asked to complete the qualifying screening survey Form 1400. If they are eligible to participate in the survey, they will also receive either a Form 1401 Performer survey or a Form 1402 Funder survey. Some NPOs have already responded to the Form 1400 (screener) and the 705 eligible organizations will be sent either a Form 1401 or 1402.

Since the answers on the Form 1400 (screener) will determine whether newly contacted organizations will receive the Performer or Funder survey form, we are estimating the number that will be eligible based on the percentage of NPOs that reported themselves eligible in the March 31, 1998 screener mailing. The estimate for the Funders Form 1402 is 245 organizations; the estimate for the Performers Form 1401 is 766 organizations. These figures include both the NPOs that we estimate will be eligible in the next screener mailing and the NPOs that responded after June 30, 1998 to the March 31, 1998 screener (606 Performers, 99 Funders).

Need for data: Failure to continue and complete this survey will result in the U.S. Government continuing to use 1973 data in estimating the nonprofit sector's R&D and the national totals of R&D funding and performance. A complete accurate description of R&D funding and performance is necessary for policymakers for planning, reporting, and tax purposes. Considerable work in drawing the sample has already been completed and $568,000 has been spent. The most efficient and cost effective way for the U.S. Government to obtain the needed data is to complete this survey. Therefore, we are asking for extension of the OMB clearance that we can mail out the survey forms, complete the survey and publish the report in a timely manner.

Burden on the Public: The Foundation estimates that a total annual reporting and recordkeeping burden of 3,294 hours will result from the collection of information. The calculation is:

2,432 NPOs (1,030 Funders 1,402 Performers) × 1 screening survey Form 1400 × 12.5 minutes = 506 hours

766 Performers × 1 revised Form 1401 × 3 hours = 2,298 hours

245 Funders × 1 reformatted Form 1402 × 2 hours = 490 hours

Total: 3,443 responses, 3,294 hours

Frequency: One-time survey; second form only to eligible Not-for-profit institutions.

Affected Public: Not-for-profit institutions.

Dated: December 29, 1998.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 99–26 Filed 1–4–99; 8:45 am]

BILLING CODE 7555–01–U

NATIONAL TRANSPORTATION SAFETY BOARD

Meetings; Sunshine Act

Time and Date: 9:30 a.m. Tuesday, January 12, 1999.

Place: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, SW, Washington, DC 20594.

Status: Open.

Matters to be Considered: 7108 Highway Special Investigation Report: Selective Motorcoach Issues.

News Media Contract: Telephone: (202) 324–6100

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

December 30, 1998.

Katia N. Proctor,

Acting Federal Register Liaison Officer.

[FR Doc. 98–34848 Filed 12–21–98; 1:29 pm]

BILLING CODE 7533–01–M

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its monthly meeting to consider matters relating to administration and enforcement of the price regulation, including the reports and recommendations of the Commission's standing Committees. The Commission will also hold its deliberative meeting to consider whether the price regulation should be amended regarding income distribution from the producer-settlement fund, supply management policies, organic milk or the administrative assessment.

DATES: The meeting is scheduled for Wednesday, January 13, 1999 to commence at 10:00 a.m.

ADDRESSES: The meeting will be held at the Tuck Library Building, 30 Park Street, Concord, NH Building, (exit 14 off I–93).

FOR FURTHER INFORMATION CONTACT: Kenneth Becker, Executive Director, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602. Telephone (802) 229–1941.

(Authority: U.S.C. 7256. Article V, Section 11 of the Northeast Interstate Dairy Compact, and 7 U.S.C. 7256.).

Kenneth Becker,

Executive Director.

[FR Doc. 99–41 Filed 1–4–99; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

Duke Energy Corporation, et al., (Catawba Nuclear Station, Units 1 and 2); Exemption

I

Duke Energy Corporation, et al. (the licensee) is the holder of Facility Operating License Nos. NPF–35 and NPF–52, for the Catawba Nuclear Station (CNS), Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

These facilities consist of two pressurized water reactors located at the licensee's site in York County, South Carolina.

II

Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Appendix A, specifies general design criteria for nuclear power plants. General Design Criterion (GDC) 57, regarding closed system isolation valves, states:

> Each line that penetrates primary reactor containment and is neither part of the reactor coolant pressure boundary nor connected directly to the containment atmosphere shall have at least one containment isolation valve which shall be either automatic, or locked closed, or capable of remote manual operation. This valve shall be outside containment and located as close to the containment as practical. A simple check valve may not be used as the automatic isolation valve.

The Commission may grant an exemption from the requirements of the regulations pursuant to 10 CFR 50.12 if the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are considered to be present under 10 CFR 50.12(a)(2) where application of the regulation in the particular circumstances conflicts with other rules or requirements of the Commission or where application of the regulation would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

III

By letter dated September 2, 1997, the licensee requested an exemption from GDC–57 for Containment Penetrations M261 and M393, which are main steam penetrations. These lines penetrate the containment and are not part of the reactor coolant pressure boundary, nor are they connected directly to the containment atmosphere. Outside of the containment, these lines branch into various separate, individual lines before reaching the respective main steam isolation valves. From each of these main steam lines, one branch supplies main steam to the turbine-driven auxiliary feedwater pump (CAPT, using the licensee's abbreviation).

Valves SA–1 and SA–4 are manual gate valves located in the Interior Doghouse immediately downstream of the respective main steam piping. These valves are locked open (with breakaway locks) and are only capable of local manual operation. These valves are required to be open by the Technical Specifications (TS) in order to supply steam to the CAPT, which is part of the engineered safety features. From a probabilistic risk assessment perspective, the CAPT is one of the most risk-significant safety system components. Adding motor operators to SA–1 and SA–4, so that they become automatic or capable of remote operation (i.e., meeting GDC–57) would, thus, degrade the reliability of the CAPT to mitigate an accident because the motor operators would introduce a new failure mode. Keeping SA–1 and SA–4 closed (i.e., meeting GDC–57) during plant operation would violate a TS requirement.

Valves SA–1 and SA–4 can be manually closed, as needed during certain accidents, to isolate the steam lines they serve. If SA–1 and SA–4 are inaccessible due to post-accident environmental conditions, the associated stop check valves can be used to isolate these steam lines. The licensee stated that the amount of time needed by operators to isolate steam using SA–1 and SA–4, or their associated stop check valves, has been factored into the accident analyses and resultant dose calculations in the Updated Final Safety Analysis Report.

Thus, as stated in the staff's safety evaluation, modifying valves SA–1 and SA–4 so that they can meet the operational requirement specified by GDC–57 would reduce the reliability of the CAPT, violate an existing TS, or both. The time needed by operators to manually close SA–1 and SA–4, or their associated stop check valves, during an accident, has been factored into accident analyses and is bounded by the design-basis accident scenarios and consequences. On such bases, the staff concludes that literal compliance with the operational aspect of GDC–57 is not desirable and the proposed exemption is acceptable.

IV

Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii). Specifically, the Commission finds that application of GDC–57 with respect to Valves SA–1 and SA–4 conflicts with existing TS and is not necessary to achieve the underlying purpose of the rule. The underlying purpose of GDC–57 is to ensure that reliable means exist to isolate this type of line when isolation is needed. As previously discussed, Valves SA–1 and SA–4 can be manually closed to isolate their respective steam lines. Thus, the design of these valves and the existence of appropriate procedures for manually closing these valves provide a reliable method of isolating the steam lines when needed. The Commission hereby grants the licensee an exemption from the requirement of 10 CFR Part 50, Appendix A, GDC–57. Specifically, this exempts the licensee from having to lock close Valves SA–1 and SA–4 against TS requirements, or having to so modify them that they become automatic, or are capable of remote manual operation.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the quality of the human environment (63 FR 71659, dated December 29, 1998).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of December 1998.

For the Nuclear Regulatory Commission.

Brian W. Sheron,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–99 Filed 1–4–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company; Notice of Withdrawal of Application for Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Indiana Michigan Power Company (the licensee) to withdraw its August 11, 1997 application for an amendment to Facility Operating License No. DPR–58 and Facility Operating License DPR–74 for the Donald C. Cook Nuclear Plant, Units 1 and 2, located in Berrien

County, Michigan. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on December 31, 1997 (62 FR 68308).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to allow filling of the emergency core cooling system (ESSC) accumulators without declaring the ECCS equipment inoperable.

Subsequently, the licensee informed the staff that the amendment is no longer required. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see the application for amendment dated August 11, 1997. This document is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located in Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Dated at Rockville, Maryland, this 29th day of December 1998.

For the Nuclear Regulatory Commission.

John F. Stang,

Senior Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 99–98 Filed 1–4–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Information Collection: RI 38–45

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of an information collection. RI 38–45, We Need the Social Security Number of the Person Named Below, is used by the Civil Service Retirement System and the Federal Employees Retirement System to identify the records of individuals with similar or the same names. It is also needed to report payments to the Internal Revenue Service.

Approximately 3,000 RI 38–45 forms are completed annually. Each form requires approximately 5 minutes to complete. The annual estimated burden is 250 hours.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before March 8, 1999.

ADDRESSES: Send or deliver comments to: Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606–0623, Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–84 Filed 1–4–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

[RI 25–49]

Proposed Collection; Comment Request for Review of a Revised of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 25–49, Verification of Full-Time School Attendance, is used to verify that adult students are entitled to payments. OPM needs to know that a full-time enrollment has been maintained.

Approximately 10,000 RI 25–49 forms are completed annually. Each form takes approximately 60 minutes to complete. The annual estimated burden is 10,000 hours.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before March 8, 1999.

ADDRESSES: Send or deliver comments to: Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606–0623, Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–94 Filed 1–4–99; 8:45 am]

BILLING CODE 6325–01–U

OFFICE OF PERSONNEL MANAGEMENT

[RI 78–11]

Proposed Collection; Comment Request for Review of an Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of an

information collection. RI 78–11, Medicare Part B Certification, is used to collect information from annuitants, their spouses, and survivor annuitants to determine their eligibility under the Retired Federal Employees Health Benefits Program for a Government contribution toward the cost of Part B Medicare.

Approximately 100 RI 78–11 forms are completed annually. Each form requires approximately 10 minutes to complete for an annual estimated burden of 17 hours.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received March 8, 1999.

ADDRESSES: Send or deliver comments to: Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606–0623, Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–95 Filed 1–4–99; 8:45 am]

BILLING CODE 6325–01–U

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reinstatement, with Change, of a Previously Approved Information Collection for Which Approval Has Expired: SF 2800 and SF 2800A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of the following reinstatement, with change, of a previously approved collection for which approval has expired. The SF 2800, Application for Death Benefits Under the Civil Service Retirement System (CSRS), is needed to collect information so that OPM can pay death benefits to the survivors of federal employees and annuitants. SF 2800A, Documentation and Elections in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death, is needed for deaths in service only so that survivors can make the needed elections regarding military service.

Approximately 68,000 SF 2800s are processed annually. The form requires approximately 45 minutes to complete. An annual burden of 51,000 hours is estimated. Approximately 6,800 applicants will use SF 2800A annually. This form also requires approximately 45 minutes to complete. An annual burden of 5,100 hours is estimated.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before February 4, 1999.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Budget & Administrative Services Division, (202) 606–0623, Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–85 Filed 1–4–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request Review of Information Collection: Instructions and Form 1417

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for clearance of a revised information collection. Form 1417, Combined Federal Campaign Annual Reporting, is used to collect information from the nearly 400 local CFC's around the country to verify campaign results.

We estimate 390 Form 1417's are completed annually. Each form takes approximately 60 minutes to complete. The annual estimated burden is 390 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on 202/606–8358, or E-mail to mbtoomey@opm.gov.

Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Jennifer M. Hirschmann, Office of Extragovernmental Affairs, CFC Operations, U.S. Office of Personnel Management, 1900 ''E'' Street, NW, Room 5450, Washington, DC 20415, Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–93 Filed 1–4–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its

last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on November 3, 1998 (62 FR 59342). Individual authorities established or revoked under Schedules A and B and established under Schedule C between October 1, 1998, and November 30, 1998, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authority was established during October 1998.

One Schedule A authority was revoked during October 1998:

National Endowment for the Arts

Thirty-five individual authorities covering Program Director, Assistant Director, and Project Evaluator positions. These positions are now covered by a single authority. Effective October 14, 1998.

No Schedule A authorities were established or revoked during November 1998.

Schedule B

No Schedule B authorities were established or revoked during October 1998.

No Schedule B authorities were established or revoked during November 1998.

Schedule C

The following Schedule C authorities were established during October through November 1998:

Commission on Civil Rights

Special Assistant to the Commissioner. Effective October 15, 1998.

Special Assistant to the Staff Director. Effective October 21, 1998.

Commodity Futures Trading Commission

Administrative Assistant to the Commissioner. Effective October 15, 1998.

Consumer Product Safety Commission

Special Assistant (Legal) to the Commissioner. Effective November 17, 1998.

Director, Field Operations to the Executive Director. Effective November 23, 1998.

Department of Agriculture

Confidential Assistant to the Special Assistant to the Secretary. Effective October 21, 1998.

Department of the Army (DOD)

Secretary (Office Automation) to the Assistant Secretary of the Army (Installations, Logistics and Environment). Effective October 8, 1998.

Department of Commerce

Senior Advisor and Counsel to the Director, Office of Policy and Strategic Planning. Effective November 2, 1998.

Senior Advisor to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective November 2, 1998.

Director, Office of Communications and Congressional Liaison to the Assistant Secretary for Economic Development, Economic Development Administration. Effective November 13, 1998.

Senior Advisor to the Assistant Secretary of Commerce and Director General of United States and Foreign Commercial Service. Effective November 20, 1998.

Department of Defense

Special Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense. Effective October 15, 1998.

Department of Education

Special Assistant to the Director, Office of Public Affairs. Effective October 16, 1998.

Special Assistant to the General Counsel. Effective November 25, 1998.

Special Assistant to the Deputy Secretary. Effective November 30, 1998.

Department of Energy

Deputy Director to the Director, Office of Public Affairs. Effective October 9, 1998.

Senior Program Analyst to the Director, Office of Intelligence. Effective October 14, 1998.

Special Assistant to the Director, Office of Advance and Special Projects. Effective October 19, 1998.

Special Assistant to the Director, Office of Human Resources. Effective November 25, 1998.

Department of Health and Human Services

Senior Advisor to the Assistant Secretary for Health. Effective October 8, 1998.

Director of Communications to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy). Effective October 15, 1998.

Special Assistant to the Deputy Director, Office of Child Support Enforcement. Effective October 23, 1998.

Special Assistant to the Commissioner, Administration for Children, Youth and Families. Effective October 28, 1998.

Confidential Assistant to the Executive Associate Administrator, Health Care Financing Administration. Effective November 3, 1998.

Confidential Assistant to the Administrator, Health Care Financing Administration. Effective November 16, 1998.

Special Assistant to Principal Deputy Assistant for Aging. Effective November 24, 1998.

Department of Housing and Urban Development

Special Assistant to the Assistant Secretary for Housing, Federal Housing Commission. Effective October 2, 1998.

Special Assistant to the Deputy Secretary. Effective November 10, 1998.

Senior Press Officer to the Assistant Secretary for Public Affairs. Effective November 19, 1998.

Secretary's Representative (Colorado) to the Deputy Secretary. Effective November 19, 1998.

Special Advisor to the Deputy Assistant Secretary for Policy Development. Effective November 19, 1998.

Special Assistant (Advance) to the Director of Executive Services. Effective November 19, 1998.

Briefing Coordinator to the Director of Executive Scheduling. Effective November 20, 1998.

Special Assistant (Speechwriter) to the Deputy Assistant Secretary for Public Affairs. Effective November 25, 1998.

Scheduling Assistant to the Director of Executive Services. Effective November 25, 1998.

Department of Justice

Counsel to the Attorney General. Effective November 19, 1998.

Department of Labor

Staff Assistant to the Deputy Assistant Secretary for Federal Contract Compliance Programs. Effective October 16, 1998.

Special Assistant to the Assistant Secretary for Pension and Welfare Benefits Administration. Effective October 27, 1998.

Staff Assistant to the Director of Scheduling and Advance. Effective October 28, 1998.

Department of the Navy (DOD)

Staff Assistant to the Secretary of the Navy. Effective November 25, 1998.

Department of State

Special Assistant to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective October 8, 1998.

Special Assistant to the Assistant Secretary, Bureau of Population, Refugees and Migration. Effective October 8, 1998.

Special Assistant to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective October 14, 1998.

Deputy Assistant Secretary to the Assistant Secretary, Bureau of Intelligence and Research. Effective October 14, 1998.

Special Assistant to the Deputy Assistant Secretary, Bureau of International Narcotics and Law Enforcement Affairs. Effective November 5, 1998.

Special Assistant to the Assistant Secretary, Bureau of International Narcotics and Law Enforcement Affairs. Effective November 6, 1998.

Member to the Director, Policy and Planning Staff. Effective November 10, 1998.

Department of Transportation

Special Assistant to the Assistant Secretary for Governmental Affairs. Effective October 6, 1998.

Staff Assistant to the Director of External Affairs. Effective October 9, 1998.

Director, Office of Public Affairs to the Federal Railroad Administrator. Effective November 6, 1998.

Special Assistant to the Federal Highway Administrator, Federal Highway Administration. Effective November 25, 1998.

Department of the Treasury

Senior Advisor to the Assistant Secretary for Public Affairs and Director of Public Affairs Planning. Effective October 28, 1998.

Department of Veterans Affairs

Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective October 29, 1998.

Special Assistant to the Assistant Secretary for Policy and Planning. Effective November 9, 1998.

Environmental Protection Agency

Special Assistant to the Chief of Staff. Effective October 2, 1998.

Director, Executive Secretariat to the Chief of Staff. Effective October 21, 1998.

Special Assistant to the Regional Administrator. Effective November 16, 1998.

Federal Deposit Insurance Corporation

Secretary to the Chairman. Effective October 21, 1998.

Federal Energy Regulatory Commission

Special Assistant to the Chief Information Officer. Effective October 8, 1998.

Federal Housing Finance Board

Counselor to the Chairman. Effective November 10, 1998.

Federal Maritime Commission

Counsel to the Commissioner. Effective November 16, 1998.

National Aeronautics and Space Administration

Legislative Affairs Specialist to the Associate Administrator for Legislative Affairs. Effective October 8, 1998.

Staff Assistant to the Associate Administrator for Legislative Affairs. Effective October 9, 1998.

White House Liaison Officer to the NASA Administrator. Effective October 14, 1998.

National Credit Union Administration

Communications and Administrative Assistant to the Board Member. Effective November 19, 1998.

National Endowment for the Humanities

Enterprise/Development Officer to the Chief of Staff. Effective November 6, 1998.

Director, Office of Public Affairs to the Chief of Staff. Effective November 19, 1998.

National Transportation Safety Board

Special Counsel to the Managing Director of the National Transportation Safety Board. Effective November 25, 1998.

Occupational Safety and Health Review Commission

Confidential Assistant to the Member (Commissioner), Occupational Safety and Health Review Commission. Effective November 16, 1998.

Office of Personnel Management

White House Liaison to the Chief of Staff. Effective October 7, 1998.

Office of Science and Technology Policy

Confidential Assistant to the Associate Director for Environment. Effective October 1, 1998.

Confidential Assistant to the Associate Director for Science. Effective November 24, 1998.

Office of the United States Trade Representative

Confidential Assistant to the Chief of Staff. Effective October 29, 1998.

Confidential Assistant to the Deputy U.S. Trade Representative. Effective October 29, 1998.

Overseas Private Investment Corporation

Special Assistant to the Managing Director for Congressional and Intergovernmental Affairs. Effective October 30, 1998.

Small Business Administration

Senior Advisor to the Deputy Administrator. Effective October 15, 1998.

Regional Administrator to the Associate Administrator for Field Administrations. Effective October 15, 1998.

U.S. International Trade Commission

Staff Economist to the Commissioner. Effective October 27, 1998.

Staff Assistant (Economist) to the Commissioner. Effective November 19, 1998.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–92 Filed 1–4–99; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act; Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–509, that the Securities and Exchange Commission will hold the following meeting during the week of January 4, 1999.

A closed meeting will be held on Thursday, January 7, 1999, at 11:00 a.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, January 7, 1999, at 11:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

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: December 30, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–34847 Filed 12–31–98; 2:18 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release NO. 34–408545; File No. SR–MSRB–97–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Political Contributions and Prohibitions on Municipal Securities Business

December 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 hereunder,[2] notice is hereby given that on December 18, 1997, 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–97–12) as described in Items I, II, and III below, which Items have been prepared by the Board. On December 3, 1998, the Board file Amendment No. 1 which supersedes the initial proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change as contained in Amendment No. 1 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed rule change

The Board has filed with the Commission a proposed rule change consisting of amendments to Rule G–37, on political contributions and prohibitions on municipal securities business, Rule G–8, on recordkeeping, Rule G–9, on preservation of records, and Rule G–38, on consultants. In addition, the MSRB submitted proposed Form G–37x as part of Amendment No. 1. Below is the text of the proposed rule change. Additions are italicized; deletions are bracketed.

Rule G–37. Political Contributions and Prohibitions on Municipal Securities Business

(a)–(d) No change.

(e)(i) *Except as otherwise provided in paragraph (e)(ii), each* [Each] broker, dealer or municipal securities dealer shall, *by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31 and October 31),* send to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending, [and the Board shall make public, reports on contributions to officials of issuers and on payments to political parties of states and political subdivisions that are required to be recorded pursuant to rule G–8(a)(xvi). Such reports shall include information concerning the amount of,] *two copies of Form G–37/G–38 setting forth, in the prescribed format, the following information:*

(A) for contributions to officials of issuers *(other than a contribution made by a municipal finance professional or a non-MFP executive officer to an official of an issuer for whom such person is entitled to vote if all contributions by such person to such official of an issuer, in total, do not exceed $250 per election)* and payments to political parties of states and political subdivisions *(other than a payment made by a municipal finance professional or a non-MFP executive officer to a political party of a state or political subdivision in which such person is entitled to vote if all payments by such person to such political party, in total, do not exceed $250 per year):* [and an indication of the contributor category of each contribution or payment] made by *the persons and entities described in subclause (2) of this clause (A):*

[(A) the broker, dealer or municipal securities dealer;]

[(B) all municipal finance professionals;]

[(C) all non-MFP executive officers; and]

[(D) all political action committees controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional.]

[Such reports also shall include information on municipal securities business engaged in and certain other information specified in this section (e), as well as other identifying information as may be determined by the Board from time to time.]

[(ii) Two copies of the reports referred to in paragraph (i) of this section (e) must be sent to the Board on Form G–37/G–38 by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31 and October 31), and must include, in the prescribed format, by state, the following information on contributions to each official of an issuer and payments to each political party of a state or political subdivision made and municipal securities business engaged in during the reporting period:]

[(A)] *(1) the* name and title (including and city/county/state or political subdivision) of each official of an issuer and political party receiving contributions or payments *during such calendar quarter, listed by state;*

[(B)] *(2) the* contribution or payment amount made and the contributor category *of each* of the *following* persons and entities [described in paragraph (i) of this section (e); and (C) such other identifying information required by Form G–37/G–38. Such reports also must include] *making such contributions or payments during such calendar quarter:*

(a) the broker, dealer or municipal securities dealer;

(b) each municipal finance professional;

(c) each non-MFP executive officer; and

(d) each political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional;

(B) a list of issuers with which the broker, dealer or municipal securities dealer has engaged in municipal securities business *during such calendar quarter, listed by state,* along with the type of municipal securities business;

(C) any information required to be included on Form G–37/G–38 for such calendar quarter pursuant to paragraph (e)(iii);

(D) any information required to be disclosed pursuant to section (d) of rule G–38; and

(E) such other identifying information required by Form G–37/G–38.

The Board shall make public a copy of each Form G–37/G–38 received from any broker, dealer or municipal securities dealer.

(ii)(A) No broker, dealer or municipal securities dealer shall be required to send Form G–37/G–38 to the Board for any calendar quarter in which either:

(1) such broker, dealer or municipal securities dealer has no information that is required to be reported pursuant to clauses (A) through (D) of paragraph (e)(i) for such calendar quarter; or

(2) subject to clause (B) of this paragraph (e)(ii), such broker, dealer or municipal securities dealer has not engaged in municipal securities business, but only if such broker, dealer or municipal securities dealer:

(a) had not engaged in municipal securities business during the seven consecutive calendar quarters immediately preceding such calendar quarter; and

(b) has sent to the Board, by certified or registered mail or some other equally prompt means that provides a record of sending, two copies of a completed Form G–37x setting forth, in the prescribed format, (i) a certification to the effect that such broker, dealer or municipal securities dealer did not engage in municipal securities business during the eight consecutive calendar quarters immediately preceding the date of such certification, (ii) certain acknowledgments as are set forth in said Form G–37x regarding the obligations of such broker, dealer or municipal securities dealer

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 18, 1997, the MSRB submitted its initial proposal which would not require Rule G–37 disclosures by dealers who have not engaged in municipal securities transactions for 2 years. Also the proposal would not have required dealers subject to reporting requirements to make any filing in the event they have nothing to disclose. After discussions between the Commission and the MSRB, the MSRB filed Amendment No. 1 on December 3, 1998. While the revised proposal maintains the exemptions of the disclosure requirements, it includes a dealer certification as a precondition to the effectiveness of the exemptions created in the original proposal.

in connection with Forms G–37/G–38 and G–37x under this paragraph (e)(ii) and rule G–8(a)(xvi), and (iii) such other identifying information required by Form G–37x; provided that, if a broker, dealer or municipal securities dealer has engaged in municipal securities business subsequent to the submission of Form G–37x to the Board, such broker, dealer or municipal securities dealer shall be required to submit a new Form G–37x to the Board in order to again qualify for an exemption under this subclause (A)(2). The Board shall make public a copy of each Form G–37x received from any broker, dealer or municipal securities dealer.

(B) If for any calendar quarter a broker, dealer or municipal securities dealer has met the requirements of clause (A)(2) of this paragraph (e)(ii) but has information that is required to be reported pursuant to clause (D) of paragraph (e)(i), then such broker, dealer or municipal securities dealer shall be required to send Form G–37/G–38 to the Board for such quarter setting forth only such information as is required to be reported pursuant to clauses (D) and (E) of paragraph (e)(i).

(iii) If a broker, dealer or municipal securities dealer engages in municipal securities business during any calendar quarter after not having reported on Form G–37/G–38 the information described in clause (A) of paragraph (e)(i) for one or more contributions or payments made during the two-year period preceding such calendar quarter solely as a result of clause (A)(2) of paragraph (e)(ii), such broker, dealer or municipal securities dealer shall include on Form G–37/G–38 for such calendar quarter all such information (including year and calendar quarter of such contributions or payments) not so reported during such two-year period.

(f)–(i) No change.

Rule G–8. Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records Required to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i)–(xv) No change.

(xvi) (A)–(G) No change.

(H) Dealers shall maintain copies of the Forms G–37/G–38 *and G–37x* submitted to the Board along with the certified or registered mail receipt or other record of sending such forms to the Board.

(I)–(J) No change.

(K) No broker, dealer or municipal securities dealer shall be subject to the requirements of this paragraph (a)(xvi) during any period that such broker, dealer or municipal securities dealer has qualified for and invoked the exemption set forth in clause (A)(2) of paragraph (e)(ii) of rule G–37; provided, however, that such broker, dealer or municipal securities dealer shall remain obligated to comply with clause (H) of this paragraph (a)(xvi) during such period of exemption. At such time as a broker, dealer or municipal securities dealer that has been exempted by this clause (K) from the requirements of this paragraph (a)(xvi) engages in any municipal securities business, all requirements of this paragraph (a)(xvi) covering the periods of time set forth herein (beginning with the then current calendar year and the two preceding calendar years) shall become applicable to such broker, dealer or municipal securities dealer.

(xvii)–(xix) No change.

(b)–(f) No change.

Rule G–9. Preservation of Records

(a) Records to be Preserved for Six Years. Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less than six years:

(i)–(vii) No change.

(viii) the records to be maintained pursuant to rule G–8(a)(xvi); *provided, however, that copies of Forms G–37x shall be preserved for the period during which such Forms G–37x are effective and for at least six years following the end of such effectiveness.*

Rule G–38. Consultants

(a)–(c) No change.

(d) Disclosure to Board. Each broker, dealer *or* [and] municipal securities dealer shall send to the Board, *in the manner and at the times prescribed in paragraph (e)(i) of rule G–37,* [by certified or registered mail, or some other equally prompt means that provides a record of sending,] and the Board shall make public, reports *on Form G–37/G–38* of all consultants used by the broker, dealer or municipal securities dealer during each calendar quarter. [Two copies of the reports must be sent to the Board on Form G–37/G38 by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31, and October 31).] Such reports shall include, for each consultant, in the prescribed format, the consultant's name, company, role and compensation arrangement. In addition, such reports shall indicate the dollar amount of payments made to each consultant during *such calendar quarter* [the report period] and, if any such payments are related to the consultant's efforts on behalf of the broker, dealer or municipal securities dealer which resulted in particular municipal securities business, then that business and the related dollar amount of the payment must be separately identified.

* * * * *

Proposed Form G–37x

Form G–37x—MSRB

Name of Dealer: _____

The undersigned, on behalf of the dealer identified above, does hereby certify that such dealer did not engage in ''municipal securities business'' (as defined in rule G–37) during the eight full consecutive calendar quarters ending immediately on or prior to the date of this Form G–37x.

The undersigned, on behalf of such dealer, does hereby acknowledge that, notwithstanding, the submission of this Form G–37x to the MSRB, such dealer will be required to:

(1) submit Form G–37/G–38 for each calendar quarter unless it has met all of the requirements for an exemption set forth in rule G–37(e)(ii) for such calendar quarter;

(2) submit Form G–37/G–38 for each calendar quarter in which it has information relating to consultants that is required to be reported pursuant to rule G–37(e)(ii)(B), regardless of whether the dealer has qualified for the exemption set forth in rule G–37(e)(ii)(A)(2);

(3) undertake the recordkeeping obligations set forth in rule G–8(a)(xvi) at such time as it no longer qualifies for the exemption set forth in rule G–8(a)(xvi)(K);

(4) undertake the disclosure obligations set forth in rule G–37(e), including in particular the disclosure obligations under paragraph (e)(iii) thereof, at such time as it no longer qualifies for the exemption set forth in rule G–37(e)(ii)(A)(2); and

(5) submit a new Form G–37 in order to again meet the requirements for the exemption set forth in rule G–37(e)(ii)(A)(2) in the event that the dealer has engaged in municipal securities business subsequent to the date of this Form G–37x and thereafter wishes to qualify for said exemption.

Signature: _____

Date: _____

(must be officer of dealer)

Name: _____

Phone: _____

Address: _____

Submit to: Municipal Securities Rulemaking Board, 1640 King Street, Suite 300, Alexandria, Virginia 22314.

* * * * *

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule G–37 prohibits a broker, dealer or municipal securities dealer (a ''dealer'') that effects transactions in municipal securities from engaging in municipal securities business[4] with an

[4] Municipal securities business is defined in Rule G–37 to encompass certain activities of dealers in connection with primary offerings of municipal securities, such as acting as underwriter in a negotiated sale, as placement agent, or as financial advisor, consultant or remarketing agent to an issuer in which the dealer was chosen on a negotiated basis.

issuer within two years after certain contributions to an official of such issuer made by the dealer, any municipal finance professional (''MFP'') associated with such dealer (other than certain *de minimis* contributions) or any political action committee (''PAC'') controlled by the dealer or any MFP. In addition, Rules G–37 and G–38 require dealers to make disclosures of certain contributions to issuer officials, payments to state and local political parties, consultant arrangements and municipal securities business on Form G–37/G–38. Rule G–8 requires dealers to create records of such contributions, payments, consultants and issuers with which the dealer has engaged in municipal securities business and rule G–9 requires dealers to preserve these records for a period of at least six years.

Although the Board continues to be vigilant for any evidence that political contributions may affect the awarding of municipal securities business, the Board believes that the direct connection between political contributions to issuer officials and the awarding of municipal securities business has been substantially reduced during the last four years by Rule G–37. The Board is sensitive, however, to the burden imposed on dealers by the requirements of Rules G–37 and G–8 and is committed to reducing this burden whenever possible as long as the effectiveness of the rules is not impaired.

Every dealer currently is obligated to comply with the reporting requirements of Rule G–37 by submitting Form G–37/G–38 to the Board on a quarterly basis and to undertake the related recordkeeping obligations under Rule G–8, even if a dealer does not engage in municipal securities business.[5] Upon reviewing the first four years of operation of Rule G–37, the Board believes that requiring dealers that do not engage in municipal securities business to comply with these disclosure and recordkeeping obligations does not substantially further Rule G–37's stated purpose of exposing to public scrutiny contributions and payments that may be linked to the awarding of municipal securities business.

Thus, the Board is proposing certain amendments to Rules G–37 and G–8 designed to sharpen the focus of the reporting and recordkeeping obligations by exempting dealers that do not engage in municipal securities business from these obligations.[6] Dealers invoking this new exemption (hereinafter referred to as the ''No Business Exemption'') will be required to meet two preconditions and will be subject to a third requirement if they after begin engaging in municipal securities business. As more fully described below, in order to invoke this No Business Exemption, a dealer must (1) not have engaged in municipal securities business for a period of at least two years; and (2) submit to the Board new Form G–37x. If such a dealer thereafter begins to engage in municipal securities business, it would also become subject to a disclosure and recordkeeping look back requirement (hereinafter referred to as the ''Look Back Requirement'') that will obligate the dealer to create records of, and to disclose on Form G–37/G–38, certain contributions to issuer officials and payments to state and local political parties made during the preceding two-year period.

In addition, the Board is proposing amendments to Rule G–37 to codify a previously recognized exemption to the Form G–37/G–38 submission requirement for any quarter in which a dealer has no information to report (hereinafter referred as the ''No Information Exemption''). The Board also is requiring certain technical amendments to consolidate the provisions currently appearing separately in Rules G–37 and G–38 relating to submission of Form G–37/G–38, to clarify Rule G–37 by eliminating certain cross-referencing to Rule G–8 and to provide for the maintenance and preservation under Rules G–8 and G–9 of any Forms G–37x submitted to the Board.

a. No Business Exemption for Dealers Not Engaged in Municipal Securities Business

A dealer that qualifies for the No Business Exemption under amended Rule G–37(e)(ii)(A)(2) would not be required to report information to the Board on Form G–37/G–38 regarding contributions to issuer officials and payments to state and local political parties and would not be required to create records of such contributions and payments pursuant to new clause (K) of Rule G–8(a)(xvi).[7] If a dealer that has invoked the No Business Exemption later engages in municipal securities business, such dealer would become subject to the Look Back Requirement under new paragraph (iii) of Rule G–37(e).

i. No Municipal Securities Business for at Least Two Years

The first condition for invoking the No Business Exemption in any calendar quarter, as set forth in amended Rule G–37(e)(ii)(A)(2)(a), is that the dealer must not have engaged in municipal securities business during such calendar quarter and during the seven consecutive calendar quarters immediately preceding such calendar quarter. Any dealer that has previously engaged in municipal securities business may qualify for the No Business Exemption if it has ceased such business for the requisite period of time. In addition, any dealer that has never engaged in municipal securities business may also qualify for the No Business Exemption, regardless of how long such dealer has been in existence.[8]

ii. Submission for Form G–37x

The second condition for invoking the No Business Exemption, as set forth in amended Rule G–37(e)(ii)(A)(2)(b), is that the dealer must have sent, by certified or registered mail or some other equally prompt means that provides a record of sending, two copies of new Form G–37x to the Board. Form G–37x would include a certification that such dealer did not engage in municipal securities business during the eight consecutive calendar quarters immediately preceding the date of such certificate. A Form G–37x submitted to the Board would remain in effect for so long as the dealer continues to refrain from engaging in municipal securities

[5] The range of activities encompassed by the term municipal securities business is significantly narrower than the types of activities that can cause a dealer to be subject to the obligation to comply with Board rules. For example, a dealer that effects municipal securities transactions that are limited to secondary market trades for its customers or underwritings of new issues solely through competitive sales is not, by effecting such transactions, engaging in municipal securities business within the meaning of Rule G–37. However, such dealer is still required to undertake the disclosure and recordkeeping obligations under current Rules G–37 and G–8 with respect to contributions and payments.

[6] This exemption would not extend to the reporting requirements under Rule G–38. Therefore, as amended, Board rules would continue to require the submission of information on Form G–37/G–38 concerning the use of consultants pursuant to Rule G–38.

[7] However, dealers still would be required to maintain copies of any Forms G–37/G–38 submitted to the Board during the period of exemption (*e.g.*, in connection with information relating to use of consultants) and of any Forms G–37x submitted to the Board to invoke the No Business Exemption. In addition, the recordkeeping exemption would not entitle a dealer to discontinue preservation of any records previously created under Rule G–8(a)(xvi) unless the period for preserving such records under Rule G–9(a)(viii) has lapsed.

[8] For this purpose, the Board would deem that a dealer that has been subjects to the rules of the Board for a period of less than two years (for example, because it came into existence during such period or because it previously affected only non-municipal securities transactions) and has not engaged in any municipal securities business since becoming subject to Board rules would automatically satisfy this two-year requirement of the No Business Exemption.

business.[9] Notwithstanding the submission of Form G–37x, a dealer would remain responsible for determining whether it continues to qualify for an exemption from the Form G–37/G–38 submission requirement for each calendar quarter.[10] Form G–37x would contain an acknowledgment of the dealer to this effect and a further acknowledgment that it will be required to undertake the recordkeeping and disclosure obligations under the Look Back Requirement at such time as it again engages in municipal securities business.

Forms G–37x submitted to the Board will be made available to the public on the same basis as are Forms G–37/G–38. Thus, Forms G–37x will be available for review and photocopying at the Board's Public Access Facility in Alexandria, Virginia. In addition, copies will be posted on the Board's Internet Web site (http://www.msrb.org), where members of the public may download such forms to their computers for review and printing free of charge. Such forms also will be made available to the public, along with Forms G–37/G–38, in computer CD–ROM format on a quarterly basis.[11]

iii. Look Back Requirement Upon Engaging in Municipal Securities Business

A dealer that has invoked the No Business Exemption but that later begins engaging in municipal securities business would become subject to the two-pronged Look Back Requirement under new paragraph (iii) of Rule G–37(e). With respect to recordkeeping, the Look Back Requirement provides that a dealer that engages in municipal securities business after having invoked the No Business Exemption must create records of political contributions and payments to state and local political parties under G–8(a)(xvi) for the then current calendar year and the two preceding calendar years and must continue to create such records thereafter unless the dealer again qualifies for, and invokes, the No Business Exemption.[12] Before engaging in municipal securities business with an issuer, such dealer would need to review the newly created records to ensure that it has not been banned from business with the issuer as a result of a contribution to an official of the issuer during the period that the dealer had invoked the No Business Exemption.

In addition, a dealer that engages in municipal securities business after having invoked the No Business Exemption must disclose on Form G–37/G–38 for the calendar quarter in which it first engages in municipal securities business all reportable contributions to issuer officials and payments to state and local political parties made during the preceding two years by the dealer, any MFP, and non-MFP executive officer or any dealer-controlled or MFP-controlled PAC, to the extent not previously reported as a result of the No Business Exemption.[13] Such dealer also would be required to send Form G–37G–38 to the Board for each calendar quarter thereafter unless the dealer qualifies for the No Information Exemption described below or again qualifies for, and invokes, the No Business Exemption.

The Look Back Requirement is intended to prevent circumvention of the rule and to promote public scrutiny of all contributions to issuer officials and payments to state and local political parties (other than qualifying *de minimis* contributions and payments) that may affect the awarding of municipal securities business to any dealer that is newly engaging in, or is again becoming engaged in, municipal securities business.

The Board strongly believes that the No Business Exemption is best suited to dealers that do not intend on engaging in municipal securities business for the foreseeable future. Thus, a dealer that qualifies for the No Business Exemption in any particular calendar quarter but intends to engage in municipal securities business in subsequent quarters should consider carefully whether the burden of having to comply with the Look Back Requirement—in particular, the burden of recreating at least two full years of records under Rule G–8(a)(xvi)—and the risk of unknowingly becoming banned from municipal securities business as a result of a contribution made to an issuer official during such exemption period outweigh the short-term benefit of not having to create and maintain such records and not having to submit Form G–37/G–38 on a current basis. The Board advises any dealer that engages in municipal securities business after having invoked the No Business Exemption that it should be prepared to evidence to the appropriate regulatory agency charged with enforcing Board rules that it has fully complied with its strict obligations to create the required records and to disclose on a timely basis the required information under the Look Back Requirement.

iv. No Effect on Disclosure and Recordkeeping Obligations Relating to Consultants

If, in any quarter during which a dealer qualifies for the No Business Exemption, that dealer uses a consultant to attempt to obtain municipal securities business, it would be required under amended Rule G–37(e)(ii)(B) to submit Form G–37/G–38 to the Board but would only be required to report information relating to such use of consultants as required under Rule G–38. Such a required submission of Form G–37/G–38 in any quarter would not cause the No Business Exemption or the related Form G–37x submission to lapse unless the dealer in fact engages in municipal securities business. Of course, a dealer that has engaged a consultant in an attempt to obtain municipal securities business from an

[9] Thus, if after submitting Form G–37x the dealer undertakes any municipal securities business (thereby subjecting itself to the Look Back Requirement) and thereafter again seeks to invoke the No Business Exemption after a new period of two years without engaging in any further municipal securities business, such dealer would be required to submit a new Form G–37x. However, dealers would carefully consider the advisability of alternating between periods of undertaking municipal securities business and periods of invoking the No Business Exemption, particularly in view of the strict requirements of the Look Back Requirement described below and the potential difficulties in complying with such strict requirement.

[10] Thus, the dealer must determine whether it has met all of the requirements for the No Business Exemption or the No Information Exemption for such quarter. In addition, the dealer would be required to submit Form G–37/G–38 for any calendar quarter in which it has information to report regarding consultants under Rule G–38, as discussed below, even if the dealer continues to qualify for the No Business Exemption.

[11] CD–ROMs are currently priced at $10.00 (plus delivery or postage charges and any applicable sales tax) for each CD–ROM containing copies of Form G–37/G–38 and at $11.50 (plus delivery or postage charges and any applicable sales tax) for each such CD–ROM that is bundled with a CD–ROM containing the software necessary to access and read the forms on a computer. *See* Securities Exchange Act Release No. 39488 (December 23, 1997), 63 FR 280 (January 5, 1998). The Board anticipates that Forms G–37x would be included in these CD–ROMs at no additional cost.

[12] A dealer that is creating records under the Look Back Requirement must re-create the records that would have been made during the then current calendar year and the two preceding calendar years but for the No Business Exemption. This includes the political contributions and payments to state and local political parties made by any individual who was an MFP or a non-MFP executive officer during this look back period. The dealer must also create records of the contributions and payments of individuals who became MFPs or non-MFP executive officers during the look back period made prior to becoming an MFP or a non-MFP executive officer of such dealer. A dealer would not be required to create records of contributions or payments made prior to such look back period.

[13] In reporting prior contributions and payments on such calendar quarter's Form G–37/G–38, a dealer would be required to include the year and calendar quarter in which each such prior contribution or payment was made. A dealer, however, would not be required to include in such report contributions or payments made more than two years prior to such quarter, even if not previously reported.

issuer should consider carefully the advisability of invoking (or continuing to invoke) the No Business Exemption since, if the dealer is successful in obtaining such business, it would need to comply with the strict requirements of the Look Back Requirement and, in particular, would need to confirm that it has been banned from undertaking municipal securities business with such issuer prior to undertaking that business.

v. No Effect on Two-Year Ban on Municipal Securities Business or Prohibition of Certain Solicitations and Coordination of Contributions Under Rule G–37 (b) and (c)

The No Business Exemption would *not* provide an exemption from the operation of sections (b) and (c) of Rule G–37.[14] thus, under certain circumstances, a political contribution (other than an MFP's *de minimis* contribution) to an official of an issuer that was not disclosed on Form G–37/G–38 and not recorded under Rule G–8(a)(xvi) by virtue of the No Business Exemption could trigger the ban on municipal securities business with such issuer under section (b). In addition, solicitation or coordination of contributions to an official of an issuer with which the dealer is seeking to engage in municipal securities business would continue to be prohibited under section (c) even if the No Business Exemption is then in effect. Dealers that qualify for the No Business Exemption but that are considering future engagements in municipal securities business should be cognizant of the continuing applicability of sections (b) and (c) of the rule.

b. No Information Exemption for Dealers With No Information to Report in a Quarter

Amended Rule G–37(e)(ii)(A)(1) would codify the previously recognized No Information Exemption to the quarterly Form G–37/G–38 submission requirement.[15] The proposed amendment provides that a dealer would not be required to send Form G–37/G–38 to the board for any calendar quarter in which *all* of the following conditions apply: (1) the dealer has not engaged in municipal securities business, (2) the dealer has no reportable political contributions to issuer officials or payments to state and local political parties, and (3) the dealer has no reportable use of consultants. The No Information Exemption would continue to obviate the need for a dealer to submit a Form G–37/G–38 that reflects no reportable activity under all category headings. A dealer, however, would be required to send Form G–37/G–38 to the Board in any subsequent calendar quarter in which it does not qualify for the No Information Exemption, unless the dealer qualifies for, and invokes, the No Business Exemption.

c. Technical Amendments

Amended Rule G–37(e)(i) would consolidate the Form G–37/G–38 submission procedures that are currently set forth separately in paragraphs (i) and (ii) of Rule G–37(e) and in Rule G–38(d). Amended Rule G–38(d) would include certain related amendments.

In addition, the existing exemption from the reporting requirements under Rule G–37 for *de minimis* contributions made by MFPs and non-MFP executive officers to officials of issuers [16] and to state and local political parties [17] is effected by a cross-reference to the recordkeeping requirements of Rule G–8(a)(xvi). To clarify the nature of such *de minimis* exemption, amended Rule G–37(e)(i)(A) incorporates into the language of Rule G–37, but does not change, the specific requirements of the *de minimis* exemption.

d. Amendments Relating to Records of Form G–37x

Section H of Rule G–8(a)(xvi) would be amended to require that dealers maintain copies of any Forms G–37x submitted to the Board and the corresponding records of sending. Amended Rule G–9(a)(viii) would require that copies of Forms G–37x be preserved for the period during which they are effective and for at least six years following the end of such effectiveness.

2. Statutory Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.[18] The Board believes that the proposed rule change will provide relief to certain dealers that do not engage in municipal securities business from the burden of compliance with the reporting requirements of Rule G–37 and the recordkeeping requirements of Rule G–8(a)(xvi) under circumstances where the effectiveness of the rules would not be impaired. The proposed rule change will also assist the enforcement agencies in maintaining accurate records of dealers that are qualified to invoke the No Business Exemption and of dealers that are required to create records and make disclosures pursuant to the Look Back Requirement.

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

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

[14] Section (b) provides that no dealer shall engage in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by the dealer, an MFP or PAC controlled by the dealer or an MFP. Section (c) provides that no dealer or MFP shall solicit any person or PAC to make any contribution, or shall coordinate any contributions, to an official of an issuer with which the dealer is engaging or seeking to engage in municipal securities business.

[15] *See* Securities Exchange Act Release No. 34161 (June 6, 1994), 59 FR 30379 (June 14, 1994), Question and Answer No. 34. *See also MSRB Reports*, Vol. 14, No. 3 (June 1994) at 15–16, and ''Instructions for Completing and Filing Form G–37/G–38,'' reprinted in *MSRB Reports*, Vol. 16, No. 1 (January 1996) at 11.

[16] A *de minimis* contribution to an official of an issuer not requiring disclosure consists of a contribution made by an MFP or a non-MFP executive officer to an official of an issuer for whom such person is entitled to vote if all contributions by such person to such official of an issuer, in total, do not exceed $250 per election.

[17] A *de minimis* payment to a political party of a state or political subdivision not requiring disclosure consists of a payment made by an MFP or a non-MFP executive officer to a political party of a state or political subdivision in which such person is entitled to vote if all payments by such person to such political party, in total, do not exceed $250 per year.

[18] Section 15B(b)(2)(c) states 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. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of 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–97–12 and should be submitted by January 26, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22 Filed 1–4–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No 34–40848; File No. SR–MSRB–98–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Consisting of an Interpretative Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers

December 28, 1998.

On November 20, 1998, 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–98–12) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change is described in Items, I, II, and III below, which Items have been prepared by the Board. The Board has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b)(3)(A)[3] of the Act, which renders the proposed rule change effective upon receipt of this 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 proposed rule change consisting of an interpretive notice regarding electronic delivery and receipt of information by brokers, dealers and municipal securities dealers (the ''Notice''). The interpretive notice is as follows:

Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers

On May 9, 1996, the Commission issued an interpretative release expressing its views on the use of electronic media for a delivery of information by, among others, brokers and dealers.[4] The Commission stated that brokers, dealers and others may satisfy their delivery obligations under federal securities laws by using electronic media as an alternative to paper-based media within the framework established in the Commission's October 1995 interpretive release on the use of electronic media for delivery purposes.[5] The Commission also indicated that an electronic communication from a customer to a broker or dealer generally would satisfy the requirements for written consent or acknowledgment under the federal securities laws.

The Board is publishing this notice to address the use of brokers, dealers and municipal securities dealers (''dealers'') of electronic media to a deliver and receive information under Board rules.[6] The Board will permit dealers to transmit documents electronically that they are required or permitted to furnish to customers under Board rules provided that they adhere to the standards set forth in the Commission Releases and summarized below.[7] Dealers also may receive consents and acknowledgments from customers electronically in satisfaction of required written consents and acknowledgments. Furthermore, the Board believes that the standards applied by the Commission by communications with customers should also apply to communications among dealers and between dealers and issuers. However, although it is the Board's goal ultimately to permit dealers to make required submissions of materials to the Board electronically if possible, this notice does not affect existing requirements for the submission of materials to the Board, its designees and certain other entities to which information is required to be delivered under Board rules.[8]

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[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 28s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Act Release No. 7288, Exchange Act Release No. 37182 (May 9, 1996), 61 FR 24644 (May 15, 1996) (the ''1996 Release'').

[5] *See* Securities Act Release No. 7233, Exchange Act Release No. 36345 (October 6, 1995), 60 FR 53458 (October 13, 1995) (the ''1995 Release'' and, together with the 1996 Release, the ''Commission Releases'').

[6] The Commission has approved similar interpretive notices filed by the National Association of Securities Dealers, Inc. and the New York Stock Exchange, Inc. *See* Securities Exchange Act Release No. 39356 (November 25, 1997), 62 FR 64421 (December 5, 1997) (Notice of Members of the National Association of Securities Dealers, Inc.); Securities Exchange Act Release No. 38731 (June 10, 1997), 62 FR 32848 (June 17, 1997) (Memo of the New York Stock Exchange).

[7] The Board also reminds dealers that the Commission indicated in the 1996 Release that dealers may fulfill their obligation to deliver to customers, upon request, preliminary official statements and final official statement in connection with primary offering of municipal securities subject to Commission Rule 15c2–12 by electronic means, subject to the guidelines set forth in the 1996 Release. *See* 1996 Release, *supra* note 4 at n. 47.

[8] For example, this notice does not apply to any requirements that dealers supply the Board with written information pursuant to Board Rules A–12, A–14, A–15, G–36, G–37 and G–38. The Board has begun the planning process for electronic submission or information required under Rule A–15 and of Form G–37/G–38 under Rules G–37 and G–38. At such time as electronic submission becomes available, the Board will publish notice thereof and of the procedures to be used for such submission. Although submission of Forms G–36(OS) and G–36(ARD) under Rule G–36 could also be made electronically by means similar to those which the Board may develop for Form G–37/G–38, such electronic submission is complicated by the requirement that Forms G–36(OS) and G–36(ARD) be accompanied by an official statement or advance refunding document, as appropriate. Given the current debate and lack of consensus among the various sectors of the municipal securities industry regarding electronic formatting of disclosure materials, and since the Board does not have the authority to dictate the format of issuer documents, the Board believes that any further action regarding electronic submissions under Rule G–36 should await resolution of these issues. Finally, the Board does not at this time anticipate permitting electronic submission of information required under Rules A–12 and A–14 since such information must be accompanied by payment of certain required fees.

Electronic submission of information under Rule G–14 will continue to be governed by Rule G–14 and associated Transaction Reporting Procedures. In addition, this notice does not alter the current submission standards applicable to the Board's Continuing Disclosure Information (CDI) System of the Municipal Securities Information Library® (MSIL®) system. The Municipal Securities Information Library and MSIL are registered trademarks of the Board.

Furthermore, submission of information to the Board's designees or certain other designated entities under Board rules must continue to be done in accordance with the procedures established by such designees or other entities. Board rules in

Dealers are urged to review the Commission Releases in their entity to ensure that they comply with all aspects of the Commission's electronic delivery requirements. Although the examples provided in the Commission Releases are based on Commission rules, the examples nonetheless provide important guidance as to the intended application of the standards set out by the Commission with respect to electronic communications.

Electronic Communications From Dealers to Customers

General. According to the standards established by the Commission, dealers may use electronic media to satisfy their delivery obligations to customers under Board rules, provided that the electronic communication satisfies the following principles:[9]

1. Notice—The electronic communication should provide timely and adequate notice to customers that the information is available electronically.[10] Since certain forms of electronic delivery may not always provide a likelihood of notice that recipients have received information that they may wish to review, dealers should consider supplementing such forms of electronic communication with a separate communication, providing notice similar to that provided by delivery in paper through the postal mail, that information has been sent electronically that the recipients may wish to review.[11]

2. Access—Customers who are provided information through electronic delivery should have access to that information comparable to the access that would be provided if the information were delivered in paper form.[12] The use of a particular electronic medium should not be so burdensome that intended recipients cannot effectively access the information provided.[13] A recipient should have the opportunity to retain the information through the selected medium (e.g., by downloading or printing the information) or have ongoing access equivalent to personal retention.[14] Also, as a matter of policy, the Commission believes that a person who has a right to receive a document under the federal securities laws and chooses to receive it electronically should be provided with a paper version of the document upon specific request or if consent to receive documents electronically is revoked.[15]

3. Evidence to Show Delivery—Dealers must have reason to believe that electronically delivered information will result in the satisfaction of the delivery requirements under the federal securities laws. Dealers should consider the need to establish procedures to ensure that applicable delivery obligations are met, including recordkeeping procedures to evidence such satisfaction.[16] Such procedures should also be designed to ensure the integrity and security of information being delivered so as to ensure that it is the information that was intended to be delivered.[17] Dealers may be able to evidence satisfaction of delivery obligations, for example, by:

(1) obtaining the intended recipient's informed consent[18] to delivery through a specified electronic medium and ensuring that the recipient has appropriate notice and access;

(2) obtaining evidence that the intended recipient actually received the information, such as by an electronic mail return-receipt[19] or by confirmation that the information was accessed, downloaded, or printed; or

(3) disseminating information through certain facsimile methods (*e.g.*, faxing information to a customer who has requested the information and has provided the telephone number for the fax machine).

Personal Financial Information. The Commission has noted, and the Board agrees, that special precautions are appropriate when dealers are delivering information to customers that is specific to that particular customer's personal financial information, including but not limited to information contained on confirmations and account statements.[20] In transmitting such personal financial information, dealers should consider the following factors:

1. Confidentiality and Security—Dealers sending personal financial information

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which such requirements currently appear include Rule G–7 (with respect to information required to be filed with the appropriate enforcement agencies), G–12 and G–15 (with respect to information to be submitted to registered clearing agencies and registered securities depositories), G–26 (with respect to customer account transfer instructions (other than Form G–26) required by registered clearing agencies), G–34 (with respect to information to be submitted to the Board's designee for assignment of CUSIP numbers and to registered securities depositories) and G–37 (with respect to application to the appropriate enforcement agencies for exemptions from the ban on municipal securities business).

[9] Dealers that structure their deliveries in accordance with the principles set forth in this notice can be assured, except where otherwise noted, that they have satisfied their delivery obligations under Board rules. However, as the Commission stated in the 1995 Release, the three enumerated principles are not the only factors relevant to determining whether the legal requirements pertaining to delivery of documents have been satisfied. Consistent with the Commission's view, the Board believes that, if a dealer develops a method of electronic delivery that differs from the principles discussed herein, but provides assurance comparable to paper delivery that the required information will be delivered, that method may satisfy delivery obligations. *See* 1995 Release, *supra* note 5 at n.22 and accompanying text. For example, a dealer can satisfy its obligation to send a confirmation to a customer under Rule G–15 by electronic means in a manner that meets the principles set forth in this notice. In addition, dealers may continue to deliver confirmations electronically through the OASYS Global system established by Thomson Financial Services, Inc. on the conditions described in the Board's Notice Concerning Use of the OASYS Global Trade Confirmation System to Satisfy Rule G–15(a), dated June 6, 1994, without specifically complying with the principles described in this notice. *See* MSRB Reports, Vol. 14, No. 3 (June 1994) at 37. *See also* 1996 Release, *supra* note 4 at n.38; 1995 Release, *supra* note 5 at n.12. Also, Rule G–29 provides that dealers must make available to customers for examination promptly upon request a copy of the Board's rules required to be kept in their offices. Dealers may continue to comply with the requirement by giving customers access to the rules either in printed form or by viewing the rules on screen from the Board's Internet web site (www.msrb.org) or from software products produced by other companies. *See* Interpretive Notice on Availability of Board Rules, dated May 20, 1998, in MSRB Reports, Vol. 18, No. 2 (August 1998) at 37.

[10] *See* 1996 Release, *supra* note 4 at n.20 and accompanying text.

[11] *See* 1996 Release, *supra* note 4 at n.21 and accompanying text; 1995 Release, *supra* note 5 at n.23 and accompanying text. The Commission notes, for example, that if information is provided by physically delivering material (such as a diskette or CD–ROM) or by electronic mail, such communication itself generally should be sufficient notice. However, if information is made available electronically through a passive delivery system, such as an Internet web site, separate notice would be necessary to satisfy the delivery requirements unless the dealer can otherwise evidence that delivery to the customer has been satisfied. *See* 1996 Release, *supra* note 4 at n.21.

[12] The Commission states that, regardless of whether information is delivered in paper form or by electronic means, it should convey all material and required information. For example, if a paper document is required to present information in a certain order, then the information delivered electronically should be in substantially the same order. *See* 1996 Release, *supra* note 4 at n.14 and accompanying text.

[13] The Commission notes, for example, that if a customer must proceed through a confusing series of ever-changing menus to access a required document so that it is not reasonable to expect that access would generally occur, this procedure would likely be viewed as unduly burdensome. In that case, the Commission would deem delivery not to have occurred unless delivery otherwise could be shown. *See* 1995 Release, *supra* note 5 at n.24.

[14] *See* 1996 Release, *supra* note 4 at n.22 and accompanying text; 1995 Release, *supra* note 5 at ns.25–26 and accompanying text.

[15] *See* 1996 Release, *supra* note 4 at n.17 and accompanying text, and 1995 Release, *supra* note 5 at n.27 and accompanying text.

[16] *See* 1996 Release, *supra* note 4 at n.23; 1995 Release, *supra* note 5 at n.22 and n.28 and accompanying text. The Board is of the view that dealers that choose to deliver information to customers electronically should consider establishing systems and procedures for providing paper copies or using alternate electronic means in a timely manner should the primary electronic media fail for any reason.

[17] *See* 1996 Release, *supra* note 4 at n.25 and accompanying text; 1995 Release, *supra* note 5 at n.22 and accompanying text. Dealers also should consider the need for systems and procedures to deter or detect misconduct by firm personnel in connection with the delivery of information, whether by electronic or paper means. *See* 1996 Release, *supra* note 4 at n.16 and accompanying text.

[18] In order for a consent to be an informed consent, the Commission has stated that the consent should specify the electronic medium or source through which the information will be delivered and the period during which the consent will be effective, describe the information that will be delivered using such means, and disclose the potential for the customer to incur costs in accessing the information. *See* 1996 Release, *supra* note 4 at n.23; 1995 Release, *supra* note 5 at n.29.

[19] To the extent that material is distributed as an attachment to an electronic mail transmission, dealers must have a reasonable basis for believing that the attachment will in fact be transmitted along with the electronic mail transmission and that the attachment will be received by the recipient in an accessible format.

[20] In addition, the Board believes that other information that is privileged or confidential, regardless of whether such information is financial in nature, should be accorded the same precautions as are accorded personal financial information.

through electronic means or in paper form should take reasonable precautions to ensure the integrity, confidentiality, and security of that information. Dealers transmitting personal financial information electronically must tailor those precautions to the medium used in order to ensure that the information is reasonably secure from tampering or alteration.

2. Consent.—Unless a dealer is responding to a request for information that is made through electronic media or the person making the request specifies delivery through a particular electronic medium, the dealer should obtain the intended recipient's informed consent prior to delivering personal financial information electronically. The customer's consent may be made either by a manual signature or by electronic means.

Electronic Communications From Customers to Dealers

Consistent with the position taken by the Commission, dealers may rely on consents and acknowledgements received from customers by electronic means for purposes of Board rules. In relying on such communications from customers, dealers must be cognizant of their responsibilities to prevent, and the potential liability associated with, unauthorized transactions. In this regard, the Commission states, and the Board agrees, that dealers should have reasonable assurance that the communication from a customer is authentic.

Electronic Transmission of Non-Required Communications

The 1996 Release states that the above standards are intended to permit dealers to comply with their delivery obligations under federal securities laws when using electronic media. While compliance with the guidelines is not mandatory for the electronic delivery of non-required information that, in some cases, is being provided voluntarily to customers, the Board believes adherence to the guidelines should be considered, especially with respect to delivery of personal financial information.

Electronic Communications Among Dealers and Between Dealers and Issuers

The Board believes that the standards applied by the Commission to communications with customers should also apply to mandated communications among dealers and between dealers and issuers. Thus, a dealer that undertakes communications required under Board rules with other dealers and with issuers in a manner that conforms with the principles stated above relating to customer communications will have met its obligations with respect to such communications. In addition, a dealer may rely on consents and acknowledgements received from other dealers or issuers by electronic means for purposes of Board rule, provided that the dealer should have reasonable assurance that the communication from such other party is authentic. However, any Board rule that explicitly requires that a dealer enter into a written agreement with another party will continue to require that such agreement be in written form.[21] Financial information, as well as other privileged or confidential information, relating to another dealer or an issuer (or relating to another person or entity contained in a transmission between a dealer and another dealer or an issuer) should be transmitted using precautions similar to those used by a dealer in transmitting personal financial information to a customer.

Rules to Which This Notice Applies

Set forth below is a list of current Board rules to which dealers may apply the guidance provided in this notice. The Board believes that the list sets forth all of the rules that require or permit communications among dealers and between dealers and customers and issuers.[22] The summaries provided of the delivery obligations under the listed rules is intended for ease of reference only and are not intended to be complete statements of all the requirements under such rules.

- Rule G–8, on books and records to be made by dealers, prohibits dealers from obtaining or submitting for payment a check, draft or other form of negotiable paper drawn on a customer's checking, savings, share or similar account without the customer's express written authorization.
- Rule G–10, on delivery of investor brochure, requires dealers to deliver a copy of the investor brochure to a customer upon receipt of a complaint by the customer.
- Rule G–11, on sales of new issue municipal securities during the underwriting period, requires certain communications between senior syndicate managers and other members of the syndicate.[23]
- Rule G–12, on uniform practice, provides for confirmation of inter-dealer transactions and certain other inter-dealer communications.[24]
- Rule G–15, on confirmation, clearance and settlement of transactions with customers, provides for confirmation of transactions with customers and the provision of additional information to customers upon request.[25]
- Rule G–19, on suitability of recommendations and transactions and discretionary accounts, requires that dealers obtain certain information from their customers in connection with transactions and recommendations and also receive customer authorizations with respect to discretionary account transactions.
- Rule G–22, on control relationships, requires certain disclosures from a dealer effecting a transaction for a customer in municipal securities with respect to which such dealer has a control relationship and customer authorization of such transaction with respect to discretionary accounts.
- Rule G–23, on activities of financial advisors, requires that, under certain circumstances, dealers acting as financial advisors to issuers provide various disclosures to issuers and customers and receive certain consents and acknowledgments from issuers.[26]
- Rule G–24, on use of ownership information obtained in fiduciary or agency capacity, requires a dealer seeking to use for its own purposes information obtained while acting in a fiduciary or agency capacity for an issuer or other dealer to receive consents to the use of such information.
- Rule G–25, on improper use of assets, provides that put options and repurchase agreements will not be deemed to be guaranties against loss if their terms are provided in writing to customers with or on the transaction confirmation.
- Rule G–26, on customer account transfers, provides for written notice from customers requesting account transfers between dealers and the use of Form G–26 to effect such transfer.[27]
- Rule G–28, on transactions with employees and partners of other municipal securities professionals, requires that a dealer opening an account for a customer who is an employee or partner of another dealer must provide notice and copies of confirmations to such other dealer and permits such other dealers to provide instructions for handling of transactions with such customer.
- Rule G–29, on availability of Board rules, provides that dealers must make available to customers for examination promptly upon request a copy of the Board's rules required to be kept in their offices.[28]
- Rule G–32, on disclosures in connection with new issues, requires dealers selling new issue municipal securities to customers to deliver official statements[29] and certain other information by settlement and requires

[21] For example, the written agreements required under Rules G–20(c), G–(23) C and G–38(b) must continue to be entered into in paper form.

[22] Unless otherwise provided in connection with the adoption by the Board of any new rules or amendments to existing rules that require or permit communications among dealers and between dealers and customers, issuers, and others, the guidance provided in this notice would also apply to any such communications.

[23] Rule G–11 also requires that syndicate members furnish certain information to others, upon request. The Board believes that, solely for purposes of this requirement under Rule G–11, such information may be provided to others by electronic means so long as the standards established in this notice with respect to electronic deliveries to customers are met.

[24] *See supra* note 5 (regarding information to be submitted to registered clearing agencies and registered securities depositories).

[25] *See supra* note 5 (regarding information to be submitted to registered clearing agencies and registered securities depositories). *See also supra* 6 (regarding alternate electronic means previously reviewed by the Board).

[26] *See supra* note 18 and accompanying text (regarding the written agreement to be entered into between a dealer acting as financial advisor and the issuer).

[27] *See supra* note 5 (regarding the use of customer account transfer instructions other than Form G–26).

[28] *See supra* note 6 (regarding alternate electronic means previously reviewed by the Board).

[29] The Board believes that dealers must be particularly cautious in delivering official statements by electronic means since they may present special challenges in ensuring that they are received by customers and other dealers without material omissions or distortions in formatting (for example, tables in which data is more than negligibly misaligned) that may cause such materials not to meet the standard for electronically transmitted information comparable to information delivered in paper form. *See supra* note 9 and accompanying text.

selling dealers, managing underwriters and certain dealers acting as financial advisors to deliver such materials to dealers purchasing new issue municipal securities, upon request.[30]

- Rule G–34, on CUSIP numbers and new issue requirements, requires underwriters to communicate information regarding CUSIP numbers and initial trade date to syndicate and selling group members.[31]
- Rule G–38, on consultants, requires dealers to provide certain information to issuers regarding consulting arrangements.[32]
- Rule G–39, on telemarketing, prohibits certain telemarketing calls without the prior consent of the person being called.[33]

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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 statement may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On May 9, 1996, the Commission issued an interpretative release expressing its views on the use of electronic media for delivery of information by, among others, brokers and dealers.[34] The Commission stated that brokers, dealers and others may satisfy their delivery obligations under federal securities laws by using electronic media as an alternative to paper-based media within the framework established in the Commission's October 1995 interpretive release on the use of electronic media for delivery purposes.[35] The Commission also indicated that an electronic communication from a customer to a broker or dealer generally would satisfy the requirements for written consent or acknowledgment under the federal securities laws.

The Board has determined to publish the Notice to address the use by dealers of electronic media to deliver and receive information under Board rules in a manner consistent with the Commission releases. Pursuant to the Notice, the Board will permit dealers to transmit documents electronically that they are required or permitted to furnish to customers under Board rules provided that they adhere to the standards set forth in the Commission Releases and summarized on the Notice. The Notice summarizes these standards, which address, among other things, notice, access and evidence to show delivery. In addition, the Notice discusses certain precautions that should be taken when using electronic means to communicate personal financial information.

The Notice also states that dealers may receive consents and acknowledgements from customers electronically in satisfaction of required written consents and acknowledgements. Furthermore, the Notice sets forth the board's belief that the standards applied by the Commission to communications with customers should also apply to communications among dealers and between dealers and issuers.

The Notice contains a list of current Board rules to which dealers may apply the guidance provided in the Notice. The Notice states that, unless otherwise provided in connection with the adoption by the Board of any new rules or amendments to existing rules that require or permit communications among dealers and between dealers and customers, issuers and others, the guidance provided in the Notice would also apply to any such communications.

The Board believes that use of electronic media to satisfy delivery requirements under Board rules will be beneficial to dealers customers and issuers, particularly when conducted in accordance with Commission standards.

The Board believes the proposed rule change in consistent with Section 15B(b)(2)(C) of the Act.[36] The Board believes that providing standards that allow dealers to effectively and efficiently deliver and receive required information under Board rules is consistent with the Act.

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 is would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement of 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 Board has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing Board rule under Section 19(b)(3)(A) of the Act, which renders the proposed rule change effective upon receipt of this filing by the Commission. At any time within 60 days of the filing the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[37] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

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[30] The Board believes that, to the extent that Rule G–32(b)(i) obligates a managing or sole underwriter to provide, upon request, multiple copies of the official statement to a dealer with respect to new issue municipal securities sold by such dealer to customers, such obligation must continue to be met with paper copies of the official statement unless the purchasing dealer has consented to electronic delivery of the official statement in lieu of delivery of multiple paper copies. *See* 1995 Release, *supra* note 5 at Section II.D. example 11.

[31] *See supra* note 5 (regarding information to be submitted to the Board's designee with respect to CUSIP number assignment and to registered securities depositories).

[32] *See supra* note 18 and accompanying text (regarding the written agreement to be entered into between a dealer and its consultant). *See also supra* note 5 (regarding the submission of Form G–37/G–38 to the Board).

[33] Although the person receiving such telemarketing call may in many cases not be customer, the Board believes that, solely for purposes of this provision of Rule G–39, such consent may be accepted by the dealer by electronic means so long as the standards established in this notice with respect to electronic communications from customers to dealers are met.

[34] *See* 1996 Release, *supra* note 4.

[35] *See* 1995 Release, supra note 5.

[36] Section 15B(b)(20(C) states 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.

[37] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of 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–98–12 and should be submitted by January 26, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–73 Filed 1–4–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40846; File No. SR–NASD–98–97]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc, Relating to Extension of Effectiveness of Pilot Injunctive Relief Rule

December 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice of hereby given that on December 22, 1998, the National Association of Securities Dealers, Inc. (''NASD'') or ''Association'') 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 NASD Regulation, Inc. (''NASD Regulation''). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD Regulation is proposing to amend Rule 10335 of the Code of Arbitration (''Code'') of the NASD to extend the pilot injunctive relief rule for six months. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

10335. Injunctions

* * *

(i) Effective Date

This Rule shall apply to arbitration claims filed on after January 3, 1996. Except as otherwise proved in this Rule, the remaining provisions of the Code shall apply to proceedings instituted under this Rule This Rule shall expire on [January 3, 1999] *July 3, 1999,* unless extended by the Association's Board of Governors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD Regulation included statement 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 NASD Regulation has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The NASD's injunctive relief rule, Rule 10335 of the Code, provides a procedure for obtaining injunctive relief in arbitration and for expediting proceedings for injunctive relief in intra-industry disputes. NASD Rule 10335 took effect on January 3, 1996, for a one-year pilot period.[3] The initial pilot period was subsequently extended twice by the Commission to permit the Regulation's Office of Dispute Resolution to gain additional experience with the rule before determining whether the rule should be made permanent, the pilot period should be extended, or the rule should be permitted to terminate by its terms.[4] In July 1998, the NASD filed a proposed rule change that would amend Rule 10335 and make it a permanent part of the Code.[5] The NASD also sought, and the Commission approved, a six-month extension of the pilot rule to provide time for the Commission to take action with respect to the proposed rule change.[6] The rule is currently due to expire on January 3, 1999.

The proposed amendments to Rule 10335 were published for comment, and the NASD filed an amendment to the proposed rule change in response to those comments in December 1998. The Commission has received additional comments regarding the proposed rule change since that amendment was filed. The purpose of the requested six-month extension of the pilot rule is to provide the NASD with time to consider and respond to the additional comments.

(b) Statutory Basis

The NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the current pilot rule serves the public interest by enhancing the satisfaction with the arbitration process afforded by expeditious resolution of certain disputes, and that it is in the interest of members that the effectiveness of the rule remains uninterrupted pending Commission action on the permanent rule filing.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(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.

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[38] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 36145 (August 23, 1995), 60 FR 45200 (August 30, 1995).

[4] Securities Exchange Act Release Nos. 38069 (December 20, 1996), 61 FR 68806 (December 30, 1996), and 39458 (December 17, 1997), 62 FR 67423 (December 24, 1997).

[5] Securities Exchange Act Release No. 40441 (September 15, 1998), 63 FR 50611 (September 22, 1998).

[6] Securities Exchange Act Release No. 40124 (June 24, 1998), 63 FR 36282 (July 2, 1998).

III. 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 provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–98–97 and should be submitted by January 26, 1999.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The NASD Regulation has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act [7] for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. 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 association and, in particular, the requirements of Section 15A(b)(6) of the Act.[8] Rule 10335 is intended to provide a pilot system within the NASD arbitration forum to process requests for temporary injunctive relief. Rule 10335 is intended principally to facilitate the disposition of employment disputes, and related disputes, concerning members who file for injunctive relief to prevent registered representatives from transferring their client accounts to their new firms. The Commission expects that during the pilot's extension the NASD Regulation will consider and respond to the comment letters regarding the proposed rule change to permanently add Rule 10335 to the Code.[9]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate because members will continue to have the benefit of injunctive relief in arbitration without interruption. The Commission is extending the pilot for six months. During that time NASD Regulation will review and respond to comments regarding the proposed rule change to amend and make Rule 10335 a permanent part of the Code. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is consistent with Section 15A of the Act.[10]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change be, and hereby is, approved on an accelerated basis for a six month pilot basis through July 3, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–74 Filed 1–4–99; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78*o*(b)(6).

[9] *See supra,* note 6.

[10] 15 U.S.C. 78*o*–3.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40835; File No. SR–NASD–98–85]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish the Nasdaq Application of the OptiMark System

December 28, 1998.

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 November 13, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On December 11, 1998, the Association filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to establish the Nasdaq Application, a new electronic trading system based on the innovative information processing technology provided by OptiMark Technologies, Inc., together with its wholly-owned subsidiary, OptiMark Services, Inc. (''OptiMark''),[4] as a facility of Nasdaq. In addition, the Association is proposing to adopt NASD Rules 4991–4998 and amend NASD Rule 11890 to govern the use of the Nasdaq Application by its members and non-member Users.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[3] *See* letter from Andrew S. Margolin, Assistant General Counsel, Nasdaq to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 11, 1998 (''Amendment No. 1''). In Amendment No. 1, the Association clarifies the definition of the term ''Designated Broker'' to indicate that, to be considered a Designated Broker, a broker must have an effective clearing arrangement in place with a member of a clearing agency registered pursuant to the Act.

[4] OptiMark Technologies, Inc. is a computer technology firm that has developed certain patented technology referred to as ''OptiMark™.'' The Nasdaq Application is one of several different trading services based on this technology that may be available for other markets in the future. One such service already has received SEC approval for operation on the Pacific Exchange. *See* Securities Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997). While the OptiMark technology is virtually identical to that which has been approved for the PCX Application, the proposed Nasdaq Application and related rules adapts and uses the OptiMark technology within the existing Nasdaq market structure.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Summary of Nasdaq's Application of the OptiMark System

Nasdaq proposes to establish rules for a new Nasdaq facility called the Nasdaq Application (''Application'') based on the information processing technology provided by OptiMark Technologies, Inc., together with its wholly-owned subsidiary, OptiMark. The Application is a computerized, screen-based trading service intended for use by NASD members and other non-member users, as described below. The Application provides a computerized mechanism designed to satisfy the trading desires of all market participants, including retail and institutional investors as well as broker-dealers. The Application enables these participants to anonymously represent their trading interest across a full spectrum of prices and sizes, and performs a computer-based optimal search and match for liquidity in securities listed on The Nasdaq Stock Market.[5] The Application is a new trading service that will be available to market participants in addition to existing Nasdaq trading systems and shall be operated as a new, additional facility of the Nasdaq Stock Market. Because the Nasdaq Application of the OptiMark System is to be operated as a Nasdaq facility, rules relating to its operation are subject to SEC review under Section 19(b) of the Act.[6]

Nasdaq represents that integrating OptiMark's technology into Nasdaq will continue Nasdaq's effort to improve opportunities for investors to receive the best available prices in the marketplace and reduce trading costs. Nasdaq states that the proposed Application would match all trading interest on a level playing field and provide an opportunity for individual investors' Profiles[7] to be aggregated and interact directly with institutional interest on an objective and anonymous basis, thereby benefiting the small investor and facilitating retail order flow. Nasdaq further notes that the proposed Application would provide an alternative method for institutional investors to transact with minimal market impact and to obtain price improvement. According to Nasdaq, the proposed Application would benefit market makers by providing an additional option to manage inventory risk through fast and efficient executions. Nasdaq believes issuers would also benefit through enhanced liquidity and flexibility available for their shareholders. The proposed Application, Nasdaq states, has the potential to increase liquidity, reduce volatility, and greatly enhance the fairness and efficiency of the Nasdaq market overall.

Application as a Facility of the Nasdaq Stock Market

The Application will be maintained as a facility of The Nasdaq Stock Market, supplementing the existing trading and execution services provided by Nasdaq to all NASD members and their customers. As mentioned above, the Application provides another means for NASD members and their customers to obtain executions of trading interest in Nasdaq securities. As a facility of the Nasdaq Stock Market, the Application allows NASD members to access the new trading facility through the Nasdaq Workstation and the Nasdaq network that connects those workstations. Nasdaq will provide a Graphical User Interface (''GUI'') that permits NASD members that are subscribers to Nasdaq Workstation Service and have signed appropriate User Agreements to transmit Profiles from their Workstations to the OptiMark Matching Module that will conduct Cycles[8] on a periodic basis. The facility also allows the use of other networks and access devices to transmit Profiles to the OptiMark Matching Module, as long as such access is properly authorized.

The Application, as a facility of the Nasdaq Stock Market, shall be subject to NASD Rules and oversight by NASD Regulation. Information regarding all Profiles submitted to the Application, whether executed or not, is subject to review by NASD Regulation and the SEC, and may be used for the purpose of ensuring that any activity conducted through the Application is consistent with NASD Rules and the federal securities laws. Thus, although the Profiles entered into the facility may be anonymous with respect to other users and the operators of the system itself, regulatory authorities have full access to all information entered.

Access to the Application

The Application is available to any NASD member that chooses to become a User and complies with all applicable rules. A User is a subscriber who has entered into an agreement with OptiMark Services, Inc. to access the Application. In addition, a non-member may become a User, provided it is authorized in advance by one or more NASD members who are Designated Brokers.[9] A non-member can be authorized by one or more NASD members in accordance with a Supplemental Account Agreement and Designated Broker Consent Agreement. The Supplemental Account Agreement, between the Designated Broker and the non-member, enables Profiles of the non-member to be executed, cleared, and settled through the use of the Designated Broker's name within the Application. The Designated Broker Consent Agreement, between the Designated Broker and OptiMark Services, Inc., provides the Designated Broker's authorization for Profiles of a non-member User to be routed, executed, and reported in the Designated Broker's name. These agreements include any applicable credit limits imposed by the Designated Broker on the non-member User.[10] The Designated Broker is responsible for all of its non-member Users' Orders and resulting transactions.

Users that are NASD members may access the Application from the Nasdaq Workstation through the Nasdaq-provided network(s). Non-member Users sponsored by NASD members (subject to the applicable agreements referenced above), as well as any interested NASD members, may obtain access to the Application from the telecommunications access services through the OptiMark-provided network(s), which may include appropriate access provided through third parties.

[5] The Application would be available for securities listed on Nasdaq, including securities listed on the Nasdaq SmallCap market. The Application would not be available to securities not listed on Nasdaq, such as those which may be quoted in the OTC Bulletin Board.

[6] 15 U.S.C. 78s(b).

[7] For a description of a Profile, *see* Section II. *Entry of Profiles and Incorporation of the Nasdaq Quote Montage.*

[8] For a description of a Cycle, *see* Section II. *Central Processing Cycles—OptiMark's Matching Algorithm.*

[9] The term *Designated Broker* is defined in proposed Rule 4991(c) as ''an NASD member who has been designated by a non-member User to execute, clear, and settle transactions resulting from the Application.'' Rule 4991(c) further provides that ''[p]articipation as a Designated Broker shall be conditioned upon the Designated Broker's membership in, or maintenance of, an effective clearing arrangement with a member of a clearing agency registered pursuant to the Act.'' *See* Amendment No. 1, *supra* note 3.

[10] A non-member User's credit limits, as they may be established from time to time by a Designated Broker (or its clearing broker), will be programmed into the OptiMark System. The Designated Broker will be alerted as its potential exposure to its customers, individually or in the aggregate, approaches the established credit limits (''Alarm Threshold'') or reaches the limit at which the Designated Broker will no longer permit a customer to submit Profiles (''Trading Limit'').

Entry of Profiles and Incorporation of the Nasdaq Quote Montage

Users would access the proposed Application by submitting customized expressions of trading interest called Profiles. Profiles enable Users to visually depict complex trading strategies by not only reflecting an investor's willingness to trade at a variety of prices and sizes, but also enabling an investor to add a third dimension to its trading strategy. This third dimension is the level of satisfaction, on a sliding scale, of trading at a given price and size. For example, an investor may be 100% satisfied to buy 100,000 shares at a price up to $1.00 above the current market price, but only 50% satisfied to buy that number of shares at a price $1.50 above it and not satisfied at all to pay more than $2.00 above it. The satisfaction levels are expressed as a number between zero and one for each coordinate on a price/size grid.

These User-defined Profiles, which are represented by graphical user interface software, are not disclosed to other Users or market participants, including any Designated Broker through whom a non-member User is authorized to submit Profiles and obtain executions.[11] The Profiles are received and logged in by the OptiMark Matching Module for the purpose of obtaining the optimal outcome of matching buyers and sellers at the best prices possible.

In addition to Profiles submitted directly by Users, the Nasdaq Application will include certain system-generated Profiles known as the ''Nasdaq Quote Montage Profiles,'' which reflect the national best bid and offer quotes from Nasdaq Market Makers, electronic communications networks (''ECNs''), and UTP Exchange Plan Specialists as displayed in the Nasdaq Quote Montage at the time a matching Cycle begins (described more fully below). In this way, the expressions of interests of all Users are reflected in the Application, as are the publicly displayed quotes comprising the national best bid and offer.

Central Processing Cycles—OptiMark's Matching Algorithm

At one or more times throughout the trading day, all Profiles (including the Nasdaq Quote Montage Profiles) will be centrally processed by the OptiMark Matching Module operated by OptiMark Services, Inc. to obtain the optimal matches among Users. The maximum frequency with which these ''Cycles'' may take place will be every 90 seconds, with no Cycle taking place prior to 9:45 a.m. EST or after 3:45 p.m. EST. The exact frequency of Cycles for any given Nasdaq security will be determined by Nasdaq, in consultation with OptiMark, based on the general characteristics of the security, the robustness of the associated Profile flow over a period, and the current level of interest expressed by Users.

The OptiMark Matching Module employs a sophisticated computer algorithm that measures and ranks all relevant mutual satisfaction outcomes by matching individual coordinates from intersecting buy Profiles with those of sell Profiles for a particular stock. The OptiMark System matches these intersecting Profiles in accordance with the following eligibility restrictions and priority principles:

1. *Eligibility Restrictions*—At commencement of a Cycle, each individual coordinate with a non-zero satisfaction value from all buy Profiles and all sell Profiles received by the OptiMark System in a given eligible security would be grouped into the Buy Profile Data Base or the Sell Profile Data Base, respectively. Each individual coordinate, no matter how small or large in the corresponding size, from either profile Data Base would be eligible to be matched with one or more coordinates from the other Profile Data Base and would result in one or more Orders,[12] provided that:

1.1. no buy and see coordinates could be matched in violation of any applicable User instructions for the respective Profiles including: (a) the maximum quantity associated with the Profile; or (b) any boundary conditions restricting the aggregate number of shares that may be bought or sold at a particular price or size range; and

1.2 no buy and sell coordinates could be matched at a price inferior to that of another coordinate with Standing (as defined below) that is eligible for matching. A buy (sell) coordinate has Standing if: (a) it has a satisfaction value of 1, and (b) all coordinates having the same price and a smaller size, down to and including the minimum trading increment (100 shares), are included in the associated Profile at a satisfaction value of 1. Also, each coordinate from a Nasdaq Quote Montage Profile would have Standing. Alternatively, no coordinate from a Profile containing any boundary conditions restricting the aggregate number of shares that may be bought or sold at a particular size range shall have Standing. For example, no coordinate from a Profile submitted by a User on an ''all-or-none'' basis would have Standing.

2. *Priority Principles*—The methods for considering potential matches between buy and sell coordinates in the Profile Data Bases would vary, depending on whether both coordinates represent satisfaction values of 1 or less than 1. As a result, these would be two separate stages of a Cycle:

2.1 *Aggregation Stage.* The OptiMark System initially would process eligible buy and sell coordinates in the Profile Data Bases, each with the full satisfaction value of 1 only. At this stage of calculation (''Aggregation Stage''), smaller-sized coordinates may be aggregated to build sufficient size to be matched with larger-sized coordinates to generate Orders in accordance with the following rules of priority, subject to the applicable eligibility restrictions:

(A) *Price aggressiveness.* A coordinate with a more aggressive price (*i.e.*, a higher price for a buy coordinate and a lower price for a sell coordinate) would have priority over coordinates with less aggressive prices.

(B) *Standing.* Among the coordinates with the same price, a coordinate with Standing would have priority over all other coordinates without Standing.

(C) *Time of entry.* Among the coordinates with the same price and Standing, the time of the entry of the associated Profile would determine relative priority, with earlier submissions having priority. All Profiles submitted by Users would be appropriately time-stamped with a unique serial number when received by the OptiMark System. Because each Nasdaq Quote Montage Profile would be generated from the most current quotation prevailing at the time of commencement of a Cycle, the effective time of entry of a Nasdaq Quote Montage Profile would be later than that of any other Profile submitted by a User.

(d) *Size:* Among the coordinates with the same price, Standing and time of entry, priority would be determined by size, with larger sizes having higher priority.

2.2. *Accumulation Stage.* Upon completion of the Aggregation Stage, the

[11] Profiles entered into the Application are contingent expressions of interest to trade at a range of prices and sizes.

[12] The term *Orders[s]* means one or more order[s] generated from a Cycle at specific prices and sizes at which execution immediately may occur. Orders in Eligible Securities for execution shall be in round lots equal to or greater than 1,000 shares, except for Orders resulting from processing the Nasdaq Quote Montage Profiles which may be in any round lot size. Orders must be in price increments conforming to the requirements of Nasdaq trading system rules and system requirements applicable to all Orders executed in Nasdaq. Such Orders shall include the following information: (1) the stock ticker symbol; (2) a designation as ''buy,'' ''sell long,'' ''sell short,'' or ''sell short exempt''; and (3) such other information as may be required by the Board of the Nasdaq Stock Market.

OptiMark System would consider potential matches between eligible buy coordinates and sell coordinates in the Profile Data Bases where one or both parties have a satisfaction value of less than 1 but greater than 0. At this stage of calculation (''Accumulation Stage''), only those buy and sell coordinates with the same associated price an size would be matched to generate Orders in accordance with the following rules of priority, subject to the applicable eligibility restrictions.

(A) *Mutual satisfaction.* A potential match with a higher mutual satisfaction value (the product of the two satisfaction values) would take precedence over other potential matches with lower mutual satisfaction values.

(B) *Time of entry (based on the earlier Profile).* Among the potential matches with the same mutual satisfaction, the match with the earlier time of entry, as determined initially by the effective time of entry assigned to the earlier of the buy and sell Profiles involved (the ''earlier Profile''), would have priority over other potential matches.

(C) *Size.* Among the potential matches with the same mutual satisfaction and time of entry for the earlier Profile, priority would be given to the one with a larger size.

(D) *Time of entry (based on the later Profile).* Among the potential matches with the same mutual satisfaction, time of entry (for the earlier Profile), and size, the match with the earlier time of entry, as determined this time by the effective time of entry assigned to the later of the buy and sell Profiles involved (the ''later Profile''), would have priority over other potential matches.

(E) *Price assignment.* In regard to all remaining ties between potential matches, which would consist solely of the coordinates for a single pair of buy and sell Profiles from two Users that may be matched with the same mutual satisfaction, time of entry and size, but at different prices, priority would be given to the match at a price more favorable to the User whose Profile has the earlier time of entry. For example, among the last potential matches remaining at the price of 10 and at 10⅛, if the sell Profile is the earlier Profile, then the match would take place at the price of 10⅛. Two or more Profiles that are entered into the OptiMark System representing the same number of shares may result in executions at differing prices depending on the other information and conditions entered into the OptiMark System.

Generation of Orders Resulting From OptiMark Cycles

Any Orders generated from a Cycle at specific prices and sizes that involve the matching of any two User-submitted Profiles, in whole or in part, will be immediately executed. The trade between the matched Users will be transmitted automatically through Nasdaq's Automated Confirmation Transaction Service (''ACT'') for trade reporting and clearing purposes (discussed more fully below).

Orders generated from a Cycle at specific prices and sizes that involve the matching of any Nasdaq Quote Montage Profile, in whole or in part, will be immediately delivered to the relevant participant through Nasdaq's existing delivery and execution systems, which will be adapted for this purpose. Currently, this means Nasdaq's SOES and SelectNet Systems. Nasdaq has already filed a proposed rule change with the SEC that would, among other things, integrate SOES and SelectNet into one trading system.[13] To facilitate the delivery and execution of any Orders resulting from the Nasdaq Quote Montage Profiles, Nasdaq intends to employ these evolving trading systems in the form that they exist in at the time the Application begins operations. Any Order transmitted through these means to the participant's quote will be executed, unless the quote has been executed or canceled, in whole or in part, prior to delivery from the Application. If the quotation against which the contra Profile was matched has been executed or canceled, in whole or in part prior to delivery from the Application, the Orders generated by the Application shall be canceled without imposing any liability against the displayed quotation. In the case of any Orders delivered from the Application to any UTP Plan Exchange Specialist, those executed by the Exchange shall be considered executed and reported on such Exchange.[14]

Clearance and Settlement

As indicated above, transactions that result from matches through the Application will be cleared using Nasdaq's post-execution service, ACT. Accordingly, final locked-in trades will be forwarded to the National Securities Clearing Corporation (''NSCC'') in the ordinary course, and will clear and settle regular way through NSCC as would any other Nasdaq transaction. All Users will receive a report of any execution resulting from processing the Profiles submitted by them (including any execution resulting against a displayed quotation) as soon as possible after the executive takes place. Non-member Users will have the option of re-allocating for clearing purposes all or a portion of any execution to another broker by the end of the trading day. A Designated Broker generally will be notified promptly after the close of the trading day to the extent it has been allocated for clearing purposes any transaction resulting from a Profile submitted by a non-member User sponsored by that Designated Broker.

In the comparison, clearance and settlement process, although the specific identify of the counterparties to a particular trade will be temporarily masked until 4:30 p.m. of the trade day, the Designated Broker that agreed to sponsor a User in the Application is fully responsible for the clearance and settlement of that trade. Nasdaq and the operator of the Application are not responsible for either the User or another Designated Broker failing to pay for or to deliver the securities traded through this facility. Further, the NASD, Nasdaq and any other NASD subsidiary or affiliate, and the operator of the OptiMark Matching Module are not deemed parties to or participants in, as principal or as agent, any trade that may occur through the Application. In proposed NASD Rule 4998(a), the Association states that neither Nasdaq, the NASD, nor any affiliate, operator, licensor, or administrator of the OptiMark Matching Module may be held responsible for any damages arising from the use of the Application. In addition, proposed NASD Rule 4998(b) states that neither Nasdaq, the NASD, nor any affiliate, operator, licensor, or administrator of the Application makes any express or implied warranties with respect to any results that a User or Designated Broker using the Application may expect. Paragraph (b) of proposed NASD Rule 4994 clearly states that responsibility for clearance and settlement remains with the Designated Broker. The User and Supplemental Account Agreements that each party must sign prior to entering a Profile into the Application likewise make clear that the responsibility for clearance and settlement lies with the Designated Broker, and that the Designated Broker must evaluate the ability of Users to settle trades when it authorizes a User to submit Profiles under its sponsorship.

Finally, trades executed through the Application will not be subject to NASD Rule 11890, regarding clearly erroneous trades. Due to the complexity of Profile

[13] *See* Securities Exchange Act Release No. 39718 (March 4, 1998) 63 FR 12124 (March 12, 1998).

[14] *See* proposed NASD Rule 4994(a), *Order Execution, Reporting and Clearing.*

matches, it would be very difficult to allow a single party to request that its part of a matched set of Profiles be withdrawn from a match after the fact. Attempting to delete a Profile that is part of a match could require an entire match to be re-constructed and create a chain reaction of broken matches. The Application will require parties entering Profiles to agree that once matched, their Profiles cannot be deemed to be erroneously entered. Consequently, Nasdaq seeks to amend Rule 11890 to make clear that the Rule cannot be used by any Application User as a means to break a trade resulting from an OptiMark match.[15]

Trade Reporting, Short Sales, and Halts

Like other executive services provided by Nasdaq, a public trade report will be immediately disseminated by Nasdaq for any executions resulting from the Nasdaq Application. These trade reports will be reported on behalf of the sell side party to the trade. The report for any resulting transaction will not be distinguished on the public tape from any other trade reported through Nasdaq. SEC Transaction Fees (Section 31 Fees)[16] apply and will be charged against the seller(s).

With respect to the NASD' short sale rule, Rule 3350, which applies to Nasdaq National Market securities, the OptiMark Match Module will be programmed to capture the bid price direction at the commencement of every Cycle, as well as the short sale status of every Profile entered (*i.e.*, whether it is marked short, and whether or not it is exempt). It will exclude any Profile that could result in a match and execution of any transaction in a Nasdaq National Market security that would be prohibited by the short sale rule.[17]

Nasdaq will suspend within the Application any activity in any security that is subject to a trading halt or suspension pursuant to NASD or SEC rules, Nasdaq Market Emergency Rules, or if deemed necessary for the protection of investors or to preserve system capacity and integrity.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[18] and Section 11A[19] of the Act. Section 15A(b)(6) requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 15A(b)(6) further requires that such rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Section 11A(a)(1) sets forth findings of Congress that new data processing and communications techniques create the opportunity for more efficient and effective market operations. Section 11A(a)(1)(C) states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers, and investors of information with respect to securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors orders to be executed without the participation of a dealer.

The Application takes advantage of new data processing and communications techniques to create the opportunity for a more efficient market in the trading of Nasdaq securities. It will enhance opportunities for investors by providing an alternative method to receive the best available price in the marketplace, obtain price improvement, and reduce trading costs.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–85 and should be submitted by January 26, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–75 Filed 1–4–99; 8:45 am]

BILLING CODE 8010–01–M

[15] Telephone conversation between Eugene Lopez, Vice President, Trading and Market Services, Nasdaq and David Sieradzki, Special Counsel, Division, Commission, on December 22, 1998.

[16] 15 U.S.C. 78ee.

[17] *See* proposed NASD Rule 4995, *Short Sale In the Nasdaq Application.*

[18] 15 U.S.C. 78*o*–3(b)(6).

[19] 15 U.S.C. 78k–1.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40851; File No. SR–NASD–98–95]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Reduction of Fee for the Regulatory Element of the Securities Industry Continuing Education Program

December 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned regulatory subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. 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 NASD is proposing the amend Schedule A of the NASD By-Laws to reduce the session fee for the Regulatory Element of the Securities Industry Continuing Education Program (''Program'') under NASD Rule 1120 and to correct a cross-reference to the NASD's continuing education rule. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Schedule A to the NASD By-Laws

* * *

Section 2—Fees

* * *

(k) There shall be a session fee of [$75.00] *$65.00* assesed as to each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to [the provisions of Part XII of Schedule ''C'' of the By-Laws] *Rule 1120*.

* * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to reduce the session fee charged for the Program under NASD Rule 1120, effective January 1, 1999. The Program was established in 1994 by the Securities Industry/Regulatory Council on Continuing Education (''Council''). The Council comprises six self-regulatory organizations (''SROs'') [3] and thirteen broker-dealers to represent the interests and needs of a wide cross-section of the securities industry. The Program was not intended to generate revenue. The Council has voted to reduce the Program fee from $75 to $65 because the Council has determined that the revenue generated by the reduced fee will be sufficient to maintain the Program. The Council will reassess the fee structure each year in order to ensure that the existing fee is consistent with the costs of operating the program. The NASD proposes to amend Section 2(k) of Schedule A of the NASD By-Laws to reflect the agreed upon fee and to correct a cross-reference to the NASD's continuing education rule.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[4] which require, among other things, that the Association's rules must provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Association operates or controls. The NASD believes that the reduced fee is fair in that it will enable the Program to be maintained on a revenue neutral basis.

[3] The SROs include the American Stock Exchange; Chicago Board Options Exchange, Incorporated; Municipal Securities Rulemaking Board; NASD; New York Stock Exchange, Inc.; and Philadelphia Stock Exchange. The Commission and the North American Securities Administrators Association have each assigned liaisons to the Council.

[4] 15 U.S.C. 78o–3(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and timing for Commission Action

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act,[5] and Rule 19b–4(e)(2) [6] thereunder, in that it establishes or changes a due, fee, or other charge imposed by the NASD. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the foregoing is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital information. 15 U.S.C. 78c(f).

the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–95 and should be submitted by January 26, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–76 Filed 1–4–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40853; File No. SR–NASD–98–57]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2, and Order Granting Accelerated Approval to Amendment No. 5 Thereto, by the National Association of Securities Dealers, Inc. Relating to Amendments to NASD Membership and Registration, Investigation and Sanctions, Conduct and Code of Procedure Rules

December 28, 1998.

I. Introduction

On August 7, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its regulatory subsidiary, NASD Regulation, Inc. (''NASD Regulation'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the NASD Membership and Registration, Investigation and Sanctions, Conduct and Code of Procedures rules. The proposed rule change was amended on August 17, 1998,[3] and further amended on August 26, 1998.[4] These amendments both clarified and corrected the language of the proposal.[5] On November 13, 1998,[6] the NASD further amended the proposal, to respond to suggestions in a comment letter.[7] [8]

The proposed rule change was published for comment in the Federal Register on September 3, 1998.[9] One comment letter was received on the proposal.[10] This Order approves the proposed rule change, as amended and grants accelerated approval to Amendment No. 5 to the proposed rule change.[11]

II. Background

In November 1994, the NASD Board of Governors appointed the Select Committee on Structure and Governance (''Select Committee'') to review the NASD's corporate governance structure and to recommend changes to enable the NASD to better meet its regulatory and business obligations, including its oversight of the Nasdaq market.

On August 8, 1996, the Commission issued an order pursuant to Section 19(h)(1) of the Act[12] (''SEC Order''),[13] including fourteen undertakings (''Undertakings''), and a related report pursuant to Section 21(a) of the Act (''21(a) Report'').[14] In these documents, the Commission indicated that the NASD had not complied with its own rules and had failed to satisfy its self-regulatory obligations under the Act to enforce such rules and the federal securities laws. Shortly thereafter, following the recommendations of the Select Committee, the NASD proposed to reorganize its corporate structure. The NASD retained ultimate policymaking, oversight, and corporate authority as the parent holding company and statutory self-regulatory organization, while granting substantial deference to the operating subsidiaries in the areas of their respective jurisdictions. Nasdaq was given sole responsibility to operate and oversee the Nasdaq market and other over-the-counter markets, while NASD Regulation was given responsibility for regulation and member and constituent services. The Rules of the Association (''Rules''), including those sections governing the conduct and review of disciplinary proceedings, member admissions procedures and denial of access decisions, were substantially revised. The revisions to the corporate structure were first proposed and adopted in mid-1996 and were approved by the Commission on August 7, 1997,[15] Additional revisions to the corporate structure were approved on November 14, 1997,[16] and in the months following,[17] while various other proposals, including revision of the procedures governing the automated systems, are still pending.[18] The proposed amendments supplement previous changes to the Rules of the Associations adopted in response to the SEC Order and related documents.

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Joan C. Conley, Secretary, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), SEC, dated August 17, 1998 (''Amendment No. 1'').

[4] E–mail from Eric Moss, Attorney, NASD Regulation of Mandy Cohen, Attorney, Division, SEC, dated August 26, 1998 (''Amendment No. 2'').

[5] In addition, on September 25, 1998 and October 30, 1998, NASD Regulation filed nonstantive amendments granting extensions of time for Commission action. *See* Letters from Eric Moss, Attorney, NASD Regulation to Katherine A. England, Assistant Director, Division, SEC, dated September 25, 1998 and October 29, 1998 (''Amendment No. 3 and Amendment No. 4,'' respectively). On December 22, 1998, the NASD filed another non-substantive amendment changing the effective date of the proposed rule change to 30 days after publication of the proposal in the NASD Notices to Members. Letter from Alden S. Adkins, Sr. Vice President and General Counsel, NASD Regulation to Katherin A. England, Assistant Director, Division, SEC, dated December 22, 1998 (''Amendment No. 6'').

[6] Letter from Alden S. Adkins, Sr. Vice President and General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division, SEC, dated November 10, 1998 (Amendment No. 5'').

[7] This comment letter is more fully discussed below in Section IV, *Comments and Responses, See*. Letter from Anne C. Flannery and Ben A. Indek, Morgan Lewis & Bockius, LLP, to Jonathan G. Katz, Secretary, SEC, dated October 6, 1998 (''Flannery Letter'').

[8] The NASD again agreed to extend the time for Commission action by letter from Eric Moss, Office of General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division, SEC, dated November 30, 1998.

[9] Securities Exchange Act Release No. 40378 (August 27, 1998), 63 FR 47064 (September 3, 1998). Amendment Nos. 1 and 2 were included in this release.

[10] *See supra* note 7, and *infra* Section IV, *Comments and Responses.*

[11] The Commission also solicits comments on Amendment No. 5. Amendment Nos. 3 and 4, which extend the time for Commission action, are non-sustantive, and therefore do not require publication for notice and comment. Amendment No. 6 is also non-substantive, and therefore does not require publication for notice and comment.

[12] 15 U.S.C. 78s(h)(1).

[13] Securities Exchange Act Release No. 37538 (August 8, 1996), SEC's Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, In the Matter of the National Association of Securities Dealers, Inc. Administrative Proceeding File No. 3–9056. Section 21(a) of the Act is set forth at 15 U.S.C. 78u(a).

[14] SEC, Report and Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and the Nasdaq Stock Market (August 8, 1996).

[15] Securities Exchange Act Release No. 38908 (August 7, 1997) 62 FR 43385 (August 13, 1997) (File No. SR–NASD–97–28).

[16] Securities Exchange Act Release No. 39326 (November 14, 1997) 62 FR 62385 (November 21, 1997) (File No. SR–NASD–97–71).

III. Description of the Proposal

NASD Regulation is proposing changes to the Rules of the Association that include: (A) the amendment and consolidation of certain non-summary procedures in the Rule 9510 Series, including those related to failure to provide information, statutory disqualification and failure to pay dues and fines; (B) the streamlining of default decisions, by measures including the consolidation of various procedures into a single rule series and the revision of review procedures; (C) the modification of pre-use filing requirements for advertising materials; (D) the refinement of certain elements of the Association's non-summary disciplinary processes, including amendment of complaints and the introduction of new evidence upon review; (E) the revision of various procedural technicalities, including the issuance of decisions in settled cases, the effective date of certain sanctions, and several others.

A. Refinement of Non-Summary Procedures

According to NASD Regulation, in a summary proceeding, the Association may impose a suspension, limitation, or prohibition before holding a hearing. In a non-summary proceeding, a respondent is given notice and an opportunity for a hearing before the Association takes any action against a respondent. In this proposal, the NASD has reorganized and simplified its rules by grouping procedures by type—a ''summary proceeding'' or a ''non-summary proceeding''—rather than by the issue or malfeasance addressed by the particular rule.

1. Denials of Access, Failure To Pay Arbitration or Settlement Awards and Imposition of Pre-Use Advertising Requirements

As approved today, the Rule 9510 Series will be simplified by deleting certain non-summary proceedings, consolidating them with other rules, and by replacing certain current procedures with simpler measures located in other parts of the Rules. This proposal refines the scope of the Rule 9510 Series and removes redundant provisions. As revised, this series will govern summary proceedings authorized by Section 15A(h)(3) of the Act, including statutory disqualification and failure to provide information; and non-summary proceedings imposing suspension or cancellation for failure to comply with an Association arbitration award or a settlement agreement, limitation or denial of access to Association systems, such as the Nasdaq workstation, and an advertising pre-use filing requirement.[19] Finally, the rule series will be amended to clarify that the Association may, rather than shall, initiate non-summary proceedings, to more accurately reflect the NASD's prosecutorial discretion.[20]

2. Suspension and Cancellation for Failure To Provide Information

a. *Procedural Changes.* the procedures addressing a member or associated person's failure to provide requested information are currently located in both the Rule 9510 and 8220 Series. As proposed, these sections will be consolidated in a revised Rule 8220 Series.

Currently, the Rule 8220 Series authorizes the national Adjudicatory Council (''NAC'') to initiate a suspension proceeding for failure to provide requested information, while the Rule 9510 Series authorizes the Association staff to initiate similar action for the same purpose. As amended, only the Department of Enforcement of NASD Regulation, acting under Board-delegated authority, will be responsible for initiating these proceedings, and will be designated as a party in the subsequent proceedings.[21] NASD Regulation points out that this is consistent with the Department of Enforcement's authority in disciplinary proceedings governed by the rule 9200 Series.[22]

The proposed changes to the Rule 8220 series amend several hearing procedures. First, under proposed Rule 8222(a), a member or associated person may file a request for hearing directly with the NASD Regulation Office of General Counsel, that is responsible for arranging such hearings, rather than the NAC, as currently required.

Second, proposed Rule 8222(b)(1) expands the pool of persons eligible for serving on the subcommittee conducting the hearings. Previously, only former members of the NASD Regulation Board of Directors, and the NASD Board of Directors could serve with current and former NAC members on the subcommittee. The proposal adds current members of these boards to the pool. At least one member, however, will have to be a current NAC member.

Third, proposed Rule 8222(b)92) lengthens the period during which a hearing must be held, from 20 to 30 days. NASD Regulation represents that 20 days is not sufficient time to find panelists and coordinate the schedules of the panelists, the parties, and their attorneys. NASD Regulation asserts that the increased time period will not prejudice the member or associated person because once a hearing is requested, a suspension or cancellation is stayed pending completion of the proceeding.

Fourth, Rule 8222(b)(3), as amended by the proposal, will allow the Association to withhold certain privileged documents, such as attorney work product.[23]

Fifth, the proposed Rule 8222(b)(7) requires that any additional information required by a hearing subcommittee be distributed to the parties not less than one business day before the subcommittee renders its decision.

Finally, the Rule 8220 Series is revised to require service by overnight commercial courier. NASD Regulation believes this will ensure efficient service.

b. *Call for Review.* Proposed Rule 8223(b) revises the call for review process by placing the authority to conduct a review with a review panel, rather than the full NASD Board. NASD Regulation believes the proposed rule change will permit suspension or cancellation proceedings to be concluded in a more timely manner. The NASD Board Executive Committee is a smaller body designed to meet on an as-needed basis and can convene more easily than the NASD Board. A review by the NASD Board is generally deferred until the next NASD Board meeting, which could be as much as two months later.[24] The review panel in most cases could conveniently arrange its review around the Executive Committee meetings because most of the participants would be the same.

The ability of any Governor to call the proceeding for review remains intact. The review panel will be composed of

[17] Securities Exchange Act Release No. 39470 (December 19, 1997), 62 FR 67197 (December 30, 1997) (File No. SR–NASD–97–81); Securities Exchange Act Release No. 39483 (December 22, 1997), 63 FR 117 (January 2, 1998) (File No. SR–NASD–97–90); Securities Exchange Act Release No. 39494 (December 29, 1997), 63 FR 586 (January 6, 1998) (File No. SR–NASD–97–97); Securities Exchange Act Release No. 39671 (February 17, 1998), 63 FR 9893 (February 26, 1998) (File No. SR–NASD–98–13); Securities Exchange Act Release No. 40213 (July 15, 1998), 63 FR 39619 (July 23, 1998) (File No. SR–NASD–98–36); Securities Exchange Act Release No. 40026 (May 26, 1998), 63 FR 30789 (June 5, 1998) (File No. SR–NASD–97–34); Securities Exchange Act Release No. 40252 (July 23, 1998), 63 FR 40759 (July 30, 1998) (File No. SR–NASD–98–46).

[18] *See, e.g.,* File No. SR–NASD–98–88 (revising listing and delisting procedures).

[19] Proposed Rule 9511. The pre-use advertising requirements are set forth in proposed Rules 2210 and 2220

[23] The confidential documents are listed in Rule 9521. This provision is based upon a provision currently found in Rule 9514(e).

[24] The NASD Board generally meets every two months.

the members of the NASD Board Executive Committee and the Governor who called the proceeding for review. The Governor who called the review would serve in lieu of an Executive Committee member who has the same classification (Industry, Non-Industry, or Public) as the calling Governor. NASD Regulation states that it would design procedures for selecting the Executive Committee member excused in such a way to prevent his or her exclusion from every panel.

NASD Regulation believes the review panel composition is also consistent with the SEC Order because a respondent in a proceeding will still have the benefit of a balanced body conducting the review. Pursuant to NASD By-Laws, as revised to be consistent with the SEC Order, the NASD Board Executive Committee must reflect the percentages of Non-Industry and Public Governors on the NASD Board. The percentage would be maintained on the review panel by having the Governor initiating the call for review serve as a substitute for an Executive Committee member of the same classification.

c. *Reinstatement Provisions.* The reinstatement provisions set forth in proposed Rule 8225 are amended to provide that requests to terminate a suspension should be filed with the Department of Enforcement. If the Department of Enforcement denies the request, a further request for relief may be filed with the NASD Regulation Office at General Counsel. If the request is filed within 30 days after service of the underlying suspension decision, the review panel that made the underlying suspension decision shall render the termination of suspension decision. NASD Regulation notes that the review panel would be most familiar with the decision and the issues during this period. If the request is filed more than 30 days after service of the underlying suspension decision, the NAC shall render the termination of suspension decision. NASD Regulation believes this will ensure that the review panel's responsibilities are concluded shortly after its decision is rendered and will not continue for an indefinite period.

d. Public Disclosure. Proposed Interpretive Material 8310–2 provides for the release of disciplinary information to the public. The proposed rule change is amended to permit the NASD to release information about suspensions and cancellations imposed under the Rule 8220 Series, unless the NAC determines otherwise. NASD Regulation explained that the NAC may determine not to release such information if a member subject to a suspension quickly cures the failure to provide information and the suspension is quickly terminated.

3. Statutory Disqualification

a. Member Obligations. The proposed amendments clarify certain procedures and expedite statutory disqualification proceedings, necessary to protect investors. Proposed Rule 9522(b) provides that a member has an independent obligation to initiate a statutory disqualification proceeding. Proposed Rule 9522 provides that if a member fails to respond to a statutory disqualification notice by filing a written request for relief within ten days, the member's membership may be canceled and the associated person's registration may be revoked, unless an extension of time is granted by the NAC for good cause shown.

b. Expedited Review. Proposed Rule 9525 provides for expedited review of statutory disqualification proceedings when the Statutory Disqualification Committee requests an expedited review and the NASD Board Executive Committee determines that such action is necessary for the protection of investors. The review panel shall be composed of the NASD Board Executive Committee, except that the Governor who called the review shall serve on the review panel in lieu of an Executive Committee member who has the same classification (Industry, Non-Industry, or Public) as the Governor. The procedures for selecting the Executive Committee member to be excused shall be designed in such a way as to prevent his or her exclusion from every panel. NASD Regulation believes this change will allow the eligibility proceeding to be concluded in a more timely manner for the protection of investors.

4. Failure To Pay Dues, Fines and Other Penalties

The proposed Rule 9530 Series sets forth procedures for suspending or canceling the membership of a member or the registration of an associated person for failure to pay fees, dues, assessments, or other charges. Procedures for such a cancellation or suspension are currently set forth in Rule 9510 Series. The proposed rule change provides that the NASD Treasurer is authorized to initiate such proceedings by sending a notice to the member or associated person. The hearing will be conducted by a hearing officer, who will be authorized to suspend or cancel the membership of a member or the registration of a person. The hearing procedures are modeled after proposed Rule 8220 Series.

The proposed rule change does not include a call for review because, according to NASD Regulation, the issues to be resolved in this type of proceeding are narrow and largely administrative. NASD Regulation believes that it is more efficient to have one hearing officer conduct the hearing and render a final decision. Moreover, NASD Regulation notes that hearing officers are well-suited to resolve the issues presented in hearings for failure to pay fees due to their training and experience in the NASD's disciplinary proceedings under the Rule 9200 Series and in non-summary proceedings for failure to pay arbitration awards under the Rule 9510 Series. Appeal to the Commission following completion of this proceeding is still available, however.[25]

5. General Procedures

The hearing and decision provisions in proposed Rule 9514 are also revised. First, proposed Rule 9514(a)(1) provides that a member or person who requests a hearing must set forth specific grounds for setting aside the notice rather than specifying the type of action the member seeks to reverse or oppose at the hearing. Second, the proposed rule provides that a member who receives notice of an advertising pre-filing requirement under Rule 2210 or 2220 has 30 days to request a hearing. Currently, Rule 9514 does not address pre-use filing requirements and any request for a hearing in a non-summary proceeding must be filed within seven days. According to NASD Regulation, the additional time is provided in advertising pre-use filing requirements because members may need additional time to consider whether to comply with or contest the requirements. Third, proposed Rule 9514(f)(5) authorizes the Office of Hearing Officers to act as custodian for non-summary proceedings for a failure to comply with an arbitration award or settlement agreement related to a NASD arbitration or mediation. Under Rule 9514(b)(1), hearing officers serve as the adjudicators in such proceedings, and according to NASD Regulation, the Office of Hearing Officers is the appropriate custodian in place of the NASD Regulation Office of General Counsel. Finally, proposed Rule 9514 has been amended to contain cross references to Rules 2210 and 2220.

Proposed Rule 9516 is amended to provide that requests for reinstatement may be made after either a summary or non-summary proceeding under the Rule 9510 Series. Currently,

[25] *See* Proposed Rule 9533.

reinstatement is available only after a non-summary proceeding.

B. Streamlining of Default Decisions

The proposed amendments to Rules 9215, 9241, 9269, and 9312 are designed to clarify and consolidate the NASD Code of Procedure (''Code'') default provisions, and to shorten the call for review period for default decisions to 25 days.

1. Consolidation of Default Provisions

Currently, Rule 9269 is devoted exclusively to defaults resulting from a failure to appear at a hearing. Defaults, however, also occur as a result of failing to file an answer or as a result of failing to appear at a pre-hearing conference. The proposed amendments consolidate many of the default provisions in Rule 9269. Accordingly, proposed Rule 9269 will address defaults resulting from a failure to appear at a hearing, as well as a failure to answer a complaint and a failure to appear at pre-hearing conference.

The default rules have also been clarified by the proposed rule change. Proposed Rule 9269(b) clarifies that default decisions issued by hearing officers should contain the same information as decisions issued in litigated cases. Subsection (c) of proposed Rule 9269 provides that either the Review Subcommittee or the NAC may, upon filing a motion and a showing of good cause, set aside a default judgment. Furthermore subsection (d) of proposed Rule 9269 clarifies that default judgments must be appealed within 25 days after service of the decision, and that sanctions are effective 30 days after service of the decision (other than bars and suspensions which are effective immediately). These time periods are already set forth in Rules 9311(a) and 9360, respectively.

2. Calls for Review by General Counsel

Proposed Rule 9312 is amended to shorten the period when the General Counsel may call a default decision for review. Currently, the General Counsel has 45 days to determine whether to call a default decision for review, which is the same call period for litigated decisions. Twenty-five days, however, is the period proposed for calling for review a default decision. NASD Regulation believes that the additional 20 days for the call decision is appropriate for litigated decisions because the NAC or the Review Subcommittee may prefer to wait and see if an appeal will be filed. According to NASD Regulation, appeals of default decisions, however, are infrequent, and the call decisions generally are made within the 25 day period. NASD Regulation believes that shortening the call period for default decisions is practicable, and will have the effect of putting default decisions (which often involve bars and expulsions) into effect sooner.

C. Modification of Pre-Use Filing Requirements

In addition to amending the procedures under which pre-use filing requirements are imposed, the NASD also proposes to amend the substantive provisions in Rules 2210(c)(4) and 2220(c). These rules require members to file advertisements, sales literature, and educational materials before they are used. The Rules currently provide that a District Business Conduct Committee (''DBCC'') may impose pre-use filing requirements and may conduct a hearing if the member opposes the pre-use requirement. These provisions, however, are consistent with the SEC Order [26] and therefore, have not been utilized since August 1996. The proposed rule change would vest authority to impose a pre-use filing requirement solely with the NASD Regulation staff, specifically the Advertising/Investment Companies Regulation Department. Moreover, any hearing requested regarding the requirement would be conducted by a hearing officer or other adjudicator, as set forth in the non-summary proceedings of the Rule 9510 Series, rather than by DBCC.

D. Refinement of Disciplinary Process

1. Amendment of Complaints Prior to Responsive Pleadings

The proposed change to Rule 9212 will enable the Department of Enforcement to amend complaints once as a matter of course, without hearing officer approval, prior to the filing of responsive pleadings. The current rule requires the Department of Enforcement to file a motion to amend any complaint, and the hearing officer must grant such motion before a complaint can be amended. NASD Regulation notes that generally such motions are granted if filed before responsive pleadings are filed. NASD Regulation believes the motion requirement for the first amendment can be eliminated without unfairness to respondents, and that the change is consistent with most judicial practice.[27]

2. Introduction of New Evidence Upon Review

Proposed Rule 9346(b) would impose a requirement that motions to introduce new evidence in appealed or called cases be made within 30 days of service of the index to the record as required under Rule 9321. Rule 9346(b) currently requires that motions to introduce new evidence in a NAC proceeding be made within 30 days of service of the notice of appeal (or within 35 days of service of notice of a call for review). NASD Regulations believes, however, that a motion to introduce new evidence generally can be best made after the parties have received copies of the official index to the record.

E. Miscellaneous Technical Revisions

1. Issuance of Decisions in Settled Cases

Proposed Rule 9270 establishes that the issuance of decisions, in settled cases, is to be done by the General Counsel. Rule 9270 currently requires that decisions relating to accepted offers of settlement be issued by the Office of Hearing Officers. According to NASD Regulation, returning decisions relating to offers of settlement to the Office of Hearing Officers after acceptance by the NAC only introduces delay and the possibility of error. Moreover, NASD Regulation believes the proposed rule change will clarify that the Hearing Officers do not have authority to approve offers of settlement.

2. Effectiveness of Sanctions

The proposed amendments to Rule 9360 generally provide that sanctions will continue to become effective 30 days after the date of service of the decision constituting final disciplinary action. The date, however, will no longer be established by the Chief Hearing Officer. NASD Regulation is proposing this change because the Chief Hearing Officer plays no part in the final stages of an appealed or called disciplinary proceeding. Proposed Rule 9360 also incorporated references to Rules 9349 and 9351 to clarify Proposed Rule 9360's applicability.

3. Reference to National Adjudicatory Council

NASD Regulation is proposing to amend definition (m) of Association Rule 0120 to reflect that the NAC has replaced the National Business Conduct Committee (''NBCC''). The NAC is a committee of NASD Regulation that acts on behalf of the NASD Regulation Board of Directors with respect to disciplinary and related procedures.

NASD Regulation noted that the NAC replaced the NBCC pursuant to

[26] SEC Order, *supra* note 13.

[27] Amendment No. 5 notes that this practice is consistent with the Federal Rules of Civil Procedure.

corporate reorganization. The revision to the corporate structure were approved on November 14, 1997.[28] Related changes to the rules describing the NAC's functions in disciplinary proceedings and related matters were approved on December 19, 1997.[29]

4. Location of Testimony

NASD Regulation proposes to amend Rule 8210 to clarify that Association staff may specify the location at which a member, associated person, or other person subject to the Association's jurisdiction must testify for the purpose of an investigation, complaint, examination, or proceeding. NASD Regulation stated that its authority to specify a location has been recently questioned and believes the proposed rule change will clarify the Association's authority.

IV. Comments and Responses

The Commission received one comment letter regarding the proposed rule change.[30] Overall, the commenter agrees with the proposed rules, but believes the rules could be improved or supplemented in certain respects.

A. Proposed Rule 9212

The Flannery Letter suggested amending proposed Rule 9212. Proposed Rule 9212, as originally submitted and noticed, sought to enable the Department of Enforcement unlimited discretion to file amendments to complaints before responsive pleadings have been filed. As originally submitted, proposed Rule 9212 would have allowed the Department of Enforcement to file unlimited amendments without hearing officer approval.[31] The Flannery Letter suggested that NASD Regulation be limited to a single amendment before the filing of responsive pleadings. The Flannery Letter noted that the Federal Rules of Civil Procedure limit parties to one amendment of right before responsive pleadings are filed.[32]

NASD Regulation agrees with the Flannery Letter and proposes to amend proposed Rule 9212 to limit the Department of Enforcement to one amendment as a matter of course before responsive pleadings are filed.[33] The revised Rule 9212(b) follows. Additions are *italicized*; deletions are [bracketed].

9212. Complaint Issuance—Requirements, Service, Amendment, Withdrawal, and Docketing

* * * * *

(b) Amendments to Complaint

The Department of Enforcement may file and serve an amended complaint that includes new matters of fact or law *once as a matter of course* at any time before the Respondent answers the complaint. *Otherwise* [After the Respondent answers], upon motion by the Department of Enforcement, the Hearing Officer may permit the Department to amend the complaint to include new matters of fact or law, after considering whether the Department of Enforcement has shown good cause for the amendment.

B. Proposed Rule 9215

The Flannery Letter also suggested that Rule 9215 arguably could shorten the time period by which responsive pleadings are to be filed. Rule 9215(e) sets forth the time requirements for responsive pleadings. Currently, Rule 9215(e) requires that upon amendment of a complaint, the time for filing an answer is extended to 14 days after service of the amended complaint. The commenter pointed out that this could lead to the respondent having less time to respond than they would have been allowed if the complaint had not been amended.[34]

NASD Regulation agrees that Rule 9215(e) could have the effect described by the commenter. NASD Regulation responds, however, that this was not its intent. In response, NASD Regulation proposes to amend Rule 9215(e) to clarify that the time period by which responsive pleading are considered timely shall not be shortened by the filing of an amended complaint by the Department of Enforcement. The text of proposed rule 9215(e) follows. Additions are *italicized*: deletions are [bracketed].

9215. Answer to Complaint

(a) Form, Service, Notice

Pursuant to Rule 9133, each Respondent named in a complaint shall serve an answer to the complaint on all other Parties within 25 days after service of the complaint on such Respondent, and at the time of service shall file such answer with the Office of Hearing Officers pursuant to 9135, 9136, and 9137. The Hearing Officer assigned to a disciplinary proceeding pursuant to Rule 9123 may extend such period for good cause. Upon receipt of a Respondent's answer, the Office of Hearing Officers shall promptly send written notice of the receipt of such answer to all Parties.

* * * * *

(e) Extension of Time To Answer Amended Complaint

If a complaint is amended pursuant to Rule 9212(b), the time for filing an answer or amended answer shall be *the greater of the original time period within which the Respondent is required to respond, or* [extended to] 14 days after service of the amended complaint. If any Respondent has already filed an answer, such Respondent shall have 14 days after service of the amended complaint, unless otherwise ordered by the Hearing Officer, within which to file an amended answer.

* * * * *

C. Rule 9268

Finally, the Flannery Letter made a recommendation that was unrelated to the proposed rule filing. The recommendation related to the determination of the time period when a hearing panel shall complete a decision. Currently, Rule 9268(a) provides that a hearing officer shall prepare a majority decision within 60 days of the ''final date allowed for filing proposed findings of fact, conclusions of law, and post-hearing briefs, or by a date established at the discretion of the Chief Hearing Officer.'' The Flannery Letter contends that when the 60 day period runs from a date established by the chief hearing officer, a respondent has no way of knowing when a majority decision will be rendered. The Flannery Letter suggested that the chief hearing officer inform the parties of the date chosen to begin the 60 day period if it is different from the final date for all post-hearing filings.

NASD Regulation has agreed to adopt a written policy pursuant to which it will send a letter to respondents informing them if a decision will not be prepared approximately 60 days after receipt of the transcripts or post hearing submissions, whichever is later. NASD Regulation believes that the issue is when the parties will receive a decision, not the starting date selected by the chief hearing officer.

V. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[35] In particular, the Commission finds that the proposed rule change is consistent

[28] Release No. 34–39326, *supra* note 10.

[29] Securities Exchange Act Release No. 39470 (December 19, 1997), 62 FR 67297 (December 30, 1997) (File No. SR–NASD–97–81).

[30] Flannery, *supra* note 9.

[31] Currently, the Department of Enforcement must move to amend any complaint and a hearing officer must grant the motion before the complaint can be amended.

[32] *See* Federal Rule of Civil Procedure 15(a).

[33] *See* Amendment No. 5.

[34] An answer must be served on all of the parties within 25 days of service of the complaint. Rule 9215(a).

[35] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

with the requirements of Sections 15A(b)(2), 15A(b)(6), 15A(b)(7), and 15A(b)(8) of the Act.[36]

Section 15A(b)(2) requires national securities associations to have the capacity to enforce compliance by their members and persons associated with members, with the provisions of the Act, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the association.

Generally, the proposed rule change modifies the disciplinary procedures of the Association to enhance its membership oversight capabilities. For example, the proposed changes to Rules 2210 and 2220 pre-use filing requirements, which replace DBCC action with that of the NASD Regulation staff, should provide a more independent and unbiased regulation and oversight of these matters. The proposed changes to Rule Series 8220 in providing and clarifying the procedures applied when members or associated person fail to provide requested information further the Association's ability to deal with these matters. Finally, the proposed changes to Rule 9510 Series in simplifying and consolidating the disciplinary procedures for summary and non-summary proceedings similarly enhance the Association's capacity and authority to enforce the provisions of the Act, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, and the Rules of the Association.

Section 15A(b)(6) provides, among other things, that the Rules of the Association must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[37] The proposed rule change is consistent with the provisions of this section because, for example, the changes to the Rule 9520 Series should enhance investor protection by enabling more rapid identification of statutorily disqualified individuals. The proposed amendments expressly identify a member's obligation to initiate a statutory disqualification proceeding if it or one of its employees is subject to a statutory disqualification; and expedite review of statutory disqualification proceedings by streamlining the process for requesting expedited review.[38] Similarly, the enhanced statutory disqualification provisions should help to prevent fraudulent and manipulative act and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by ensuring that members and associated persons are qualified and eligible for membership and when necessary, seeks to ensure prompt disqualification.

Moreover, proposed Interpretative Material 8310–2 is also consistent with the provision of Section 15A(b)(6) because it allows prompt release of disciplinary information to the public. The Commission believes disseminating disciplinary information to the public serves to prevent fraudulent and manipulative acts and practices and protects investors and the public interest by acting as a deterrent to violating the rules of the Association. The Commission also believes that publication of disciplinary information also serves to notify the public of those persons who have committed rule violations.

Section 15A(b)(7) requires that members and persons associated with members be appropriately disciplined for violation of any provision of the Act, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the association.[39] Proposed Rule 8220 Series provides for appropriate discipline for the failure to provide requested information. If a member fails to provide requested information, the NAC may suspend or cancel the member. The proposed Rule 9510 Series also provides for the appropriate discipline of members. This series governs certain summary and non-summary proceedings such as, among other things, summary proceedings authorized by Section 15A(h)(3) of the Act, non-summary proceedings to suspend or cancel a member for failing to comply with an arbitration award, or for failing to meet qualification requirements or if a member cannot be permitted to continue to have access with safety to investors, creditors, members, or the Association. The proposed rule change is consistent with Section 15A(b)(7) of the Act, as shown by these examples, because it provides an appropriate mechanism for disciplining members and persons associated with members for violations of the Act, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the Association.

Finally, Section 15A(b)(8) of the Act requires that the rules of the association provide a fair procedure for the disciplining of members and person associated with members.[40] The proposed rule change is consistent with the provisions of this section. For example, the review procedures of the Rule 8220 Series, which addresses the procedure for suspending or canceling a member for failing to provide requested information, have been revised to enhance the fair discipline of members.

Currently, decisions of the appointed subcommittee are reviewed by the full NASD Board. Proposed Rule 8223(b) is revised to place the review authority with the NASD Board Executive Committee. The call for review by any governor, however, remains intact but is also revised. If a governor calls a decision for review, that governor shall serve on the NASD Board Executive Committee to review the decision. That governor shall serve in place of an executive committee member who shares the same classification (Industry, Non-Industry, or Public) as the calling governor. The Commission believes that by having the calling governor serve on the review committee, the governor should be able to more fully develop and investigate the reasons why he or she called the decision for review.

The Commission also notes that the procedure for the calling governor to serve on the review panel ensures that a balanced panel will conduct the review. The percentages of executive committee members remain intact as the calling governor is appointed to serve as a substitute for an executive committee member of the same classification. These revisions should provide members with more balanced and fair procedures for reviewing cancellation and suspension decisions.[41]

In addition, the proposed change of the review panel should also foster fairness in disciplinary proceedings. By placing the review authority with the NASD Board Executive Committee,

[36] 15 U.S.C. 78o–3(b)(2); 15 U.S.C. 78o–3(b)(6); 15 U.S.C. 78o–3(b)(7); and 15 U.S.C. 78o–3(b)(8).

[37] 15 U.S.C. 78o–3(b)(6).

[38] Under the Proposal, as approved, the Statutory Disqualification Committee can request expedited review by the NASD Executive Committee if such action is necessary for the protection of investors.

[39] 15 U.S.C. 78o–3(b)(7).

[40] 15 U.S.C. 78o–3(b)(8)

[41] The Commission notes that the changes in the procedures of a call for review by a governor set forth in Rule 8223 are also proposed in Rule 9525. Proposed Rule 9525 addresses expedited reviews of statutory disqualifications and contains the same procedures as proposed Rule 8223. The Commission finds that the proposed changes to Rule 9525 are also consistent with Section 15A(b)(8) for the reasons set forth above for proposed Rule 8223.

proceedings should be concluded in a more timely manner. As NASD Regulation noted, the NASD Board Executive Committee is a smaller body designed to meet on an as-needed basis that can convene more easily than the NASD Board.

Proposed Rule 9212 is also consistent with the requirements of Section 15A(b)(8). The rule is amended to provide that the Department of Enforcement is entitled one amendment of a complaint, as a matter of course, before responsive pleadings are filed. The Commission finds that this ensures fairness of disciplinary procedures by expediting pre-hearing proceedings by deleting the requirement of hearing officer approval for the first amendment. Respondents are also protected. By requiring hearing officer approval of all subsequent amendments, respondents will not be subject to unchecked delays caused by unlimited amendments.

The proposed changes to the Rule 9530 Series also help ensure that disciplinary procedures are fair. The proposed Rule 9530 Series sets forth the procedures for suspending or canceling the membership of a member or the registration of an associated person who fails to pay fees, assessments, or other charges. Under this rule series, a hearing officer conducts the hearing and makes the final decision as to canceling or suspending the membership of a member or the registration of a person. NASD Regulation notes that there is no call for review of a hearing officer decision because the issues resolved are narrow and largely administrative.

The Commission finds that the procedures set forth in the proposed Rule 9530 Series promote fair disciplinary procedures. The proposed rule change consolidates and clarifies the procedures for failure to pay dues, assessments, or other charges. Having the same hearing officer conduct the hearing and render the decision provides members with expedited review and prompt resolution of claims.

The Commission finds good cause for approving Amendments No. 5 to the proposed rule change before the thirtieth day after the date of publication of notice thereof in the **Federal Register.**[42] As discussed in Section IV above, Amendment No. 5 revises proposed Rules 9212 and 9215. The amendment to proposed Rule 9212 states that the Department of Enforcement shall be able, once as a matter of course, to amend complaints with hearing officer approval before a respondent files an answer. The original proposal allowed the Department of Enforcement unlimited amendments to complaints without hearing officer approval. The amended proposed rule should prevent unnecessary delays in proceedings and ensure fairness by providing hearing officer oversight of multiple amendments.

The amendment to proposed Rule 9215 provides that if the Department of Enforcement amends a compliant the respondent shall not be affected by a shorter time period in which to answer. The amended proposal clarifies that the respondent will either be afforded the full remaining period allowed under Rule 9215(a) or fourteen days from service of the amended complaint, whichever is greater. The amended proposed rule change promotes fairness because it protects a respondent's ability to adequately answer complaints by ensuring that he has sufficient time.

For these reasons, the Commission believes that good cause exists, consistent with Section 19(b) of the Act,[43] to approve Amendment No. 5 to the proposed rule change on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 5. Persons making written submission 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 other person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file No. SR–NASD–98–57 and should be submitted by January 26, 1999.

VII. Conclusion

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,[44] that the proposed rule change, as amended, (SR–NASD–98–57) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[45]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–77 Filed 1–4–99; 8:45 am]

BILLING CODE 8010–01–M

[42] The Commission notes that Amendment Nos. 3 and 4 are non-substantive amendments granting the Commission extensions of time to act which do not require publication for notice and comment. Amendment No. 6 is also a non-substantive amendment changing the effective date of the proposed rule change which does not require publication of notice and comment.

[43] 15 U.S.C. 78s(b).

[44] 15 U.S.C. 78s(b)(2).

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40847; File No. SR–NYSE–98–32]

Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Shareholder Approval or Stock Option Plans

December 28, 1998.

On October 13, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] to amend the Listed Company Manual (the ''Manual'') regarding the Exchange's shareholder approval policy (the ''Policy'') with respect to stock option and similar plans (''Plans''). A complete description of the proposed rule change is found in the notice of filing which was published in the *Federal Register* on November 16, 1998.[3]

In response to the solicitation of comments, the Commission received a request to extend the comment period.[4] Given the public's interest in the proposed rule change and the Commission's desire to give the public sufficient time to consider the proposal, the Commission has decided to extend the comment period pursuant to Section 19(b)(2) of the Act.[5] Accordingly, the

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40679 (November 13, 1998) 63 FR 64304 (November 19, 1998)(''Release'') The notice also solicited comment on several specific issues. *See* Section IV of the Release.

[4] *See* Letter from Sarah Teslik, Council of Institutional Investors, to Jonathan G. Katz, Secretary, SEC, dated November 20, 1998. As originally noticed, the comment period expired on December 10, 1998.

[5] 15 U.S.C. 78s(b)(2).

comment period shall be extended until January 25, 1999.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–32 and should be submitted by January 25, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21 Filed 1–4–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4955]

Navigation Safety Advisory Council; charter renewal.

AGENCY: Coast Guard, DOT.

ACTION: Notice of charter renewal.

SUMMARY: The Secretary of Transportation has renewed the charter for the Navigation Safety Advisory Council (NAVSAC) to remain in effect for a period of 2 years from December 1, 1998, until December 1, 2000. NAVSAC is a federal advisory committee constituted under 5 U.S.C. App. 2. Its purpose is to provide advice and make recommendations to the Coast Guard on matters relating to the prevention of collisions, rammings, and groundings, including inland rules of the road, international rules of the road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

[6] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Ms. Margie Hegy, Executive Director of NAVSAC, telephone 202–267–0415, fax 202–267–4700. For questions on viewing the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, 202–366–9329.

Dated: December 28, 1998.

Joseph J. Angelo,

Director of Standards, Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–54 Filed 1–4–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4920]

Navigation Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Navigation Safety Advisory Council (NAVSAC). NAVSAC provides advice and makes recommendations to the Coast Guard on matters relating to the prevention of vessel collisions, rammings, and groundings, including, but no limited to: Inland Rules of the Road, International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

DATES: Applications and any supporting information must be received on or before February 28, 1997.

ADDRESSES: You may request an application form by writing to Commandant (G–M–2), U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593–0001; by calling 202–267–6164; by faxing 202–267–4700, or by e-mail *Jshort@comdt.uscg.mil.* Submit application forms to the same address. This notice and the application form are available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Margie Hegy, Executive Director of NAVSAC at 202–267–0415, or LT Robyn Heincy, Assistant to the Executive Director, telephone 202–267–6791, fax 202–267–4700. For questions on viewing, or submitting materials to, the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION: The Navigation Safety Advisory Council (NAVSAC) is a Federal advisory council constituted under 5 U.S.C. App. 2. It provides advice and makes recommendations to the Secretary of Transportation, via the Commandant of the Coast Guard, on mattes relating to the prevention of vessel collisions, rammings, and groundings, including, but not limited to, Inland Rules of the Road, International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

NAVSAC meets at least twice a year at various locations in the continental United States. It may also meet for extraordinary purposes. Its committees and working groups may meet to consider specific problems as required.

The Coast Guard will consider applications for seven positions that expire or become vacant on June 30, 1999. To be eligible, applicants should have expertise in the above mentioned subject areas. To assure balanced representation of subject matter expertise, members are chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety; (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry; (3) individuals with an interest in maritime law; and (4) Federal and state officials with responsibility for vessel and port safety.

Each member serves for a term of 3 years. A few members may serve consecutive terms. Members serve without compensation from the Federal Government, although travel reimbursement and per diem may be provided.

In support of the policy of the Department of Transportation on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

Applicants selected may be required to complete a Confidential Financial Disclosure Report (OGE Form 450). Neither the report nor the information it contains may be released to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: December 22, 1998.

R.C. North,

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

[FR Doc. 99–56 Filed 1–4–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 189/ EUROCAE Working Group 53; Air Traffic Services Safety and Interoperability Requirements

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint Special Committee (SC)–189/EUROCAE Working Group (WG)–53 meeting to be held February 8–12, 1999, starting at 9:00 a.m. on February 8. The meeting will be held at MAEVA Latitudes, Seilh (30 kilometers from Toulouse), Route de Grenade, 31840 Seilh, France: (33) 5 62 13 14 15 (phone), (33) 5 61 59 77 97 (fax). The host, Serge Bagieu, Aerospatiale, may be reached at (33) 5 61 18 15 81 (phone), (33) 5 61 93 80 90 (fax), or serge.bagieu@avions.aerospatiale.fr (e-mail).

The agenda will be as follows: Monday, February 8, Opening Plenary Session Convenes at 9:00 a.m.: (1) Introductory Remarks; (2) Review and Approval of the Agenda (Monday); (3) Review and Approval of Summary of the Previous Meeting; (4) Sub-Group and Related Reports; (5) Position Papers Planned for Plenary Agreement; (6) SC–189/WG–53 Co-chair Progress Report. Tuesday, February 9–Thursday, February 11: (7) Sub-group Meetings (Sub-group 1, Interoperability Requirements; Sub-group 2, Safety Requirements; Sub-group 3, Performance Requirements). Friday, February 12, Closing Plenary Session: (8) Introductory Remarks; (9) Review and Approval of Agenda (Friday); (10) Review of Preliminary Meeting Minutes; (11) Sub-group and Related Reports; (12) Position Papers Planned for Plenary Agreement; (13) SC–189/WG–53 Co-chair Progress Report and Wrap-up.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036, by phone at (202) 833–9339, by fax at (202) 833–9434, or by e-mail at hmoses@rtca.org. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 28, 1998.

Richard A. Cox,

Designated Official.

[FR Doc. 99–82 Filed 1–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4956, Notice 1]

RIN 2127–AH29

Agency Priorities and Public Participation in the Implementation of the 1998 Agreement on Global Technical Regulations; Statement of Policy

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

ACTION: Request for comments; notice of public workshop.

SUMMARY: NHTSA is holding a public workshop and soliciting written public comments on a draft statement of policy concerning (1) agency's priorities in the implementation of the United Nations/ Economic Commission for Europe 1998 Agreement on Global Technical Regulations for Wheeled Vehicles, Equipment and Parts, and (2) this agency's activities and practices for facilitating public participation in the implementation of the 1998 Agreement. The policy statement would go into effect when the 1998 Agreement enters into force. The notice also explores other methods for promoting public participation, e.g., the possibility of including members of the public as advisers in the NHTSA delegation.

The U.S. Environmental Protection Agency (EPA) which, together with NHTSA, negotiated the Agreement for the U.S., will participate in the public workshop. EPA plans to issue a similar statement of policy.

DATES: Public workshop: The public workshop will be held on February 3, 1999, from 9:00 a.m. to 5:00 p.m.

Those wishing to participate in the workshop should contact Ms. Julie Abraham by February 1, 1999.

Written comments: Written comments may be submitted to this agency and must be received by February 18, 1999.

ADDRESSES: Public workshop: The public workshop will be held in rooms 6200–6204 of the Nassif Building, 400 Seventh St. SW, Washington DC 20590.

Written comments: All written comments must refer to the docket and notice number of this notice and be submitted (preferably 2 copies) to the Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. (Docket Room is open 10:00 a.m. to 5:00 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT:

Ms. Julie Abraham, Director, Office of International Harmonization, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC. Telephone: (202) 366–2114. Fax: (202) 366–2106.

Ms. Rebecca MacPherson, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

A. Opening of the 1998 Agreement for Signature

On June 25, 1998, the U.S. became the first signatory to the United Nations/ Economic Commission for Europe (UN/ ECE)[1] Agreement Concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts Which Can Be Fitted And/or Be Used on Wheeled Vehicles (the ''1998 Agreement''). This agreement was negotiated under the

[1] The Economic Commission for Europe was established by the United Nations in 1947 to help rebuild post-war Europe, develop economic activity and strengthen economic relations between European countries and between them and the other countries of the world.

auspices of the UN/ECE under the leadership of the U.S., European Community and Japan.[2] The 1998 Agreement provides for the establishment of global technical regulations regarding the safety, emissions, energy conservation and theft prevention of wheeled vehicles, equipment and parts. The covered equipment and parts include, but are not limited to, exhaust systems, tires, engines, acoustic shields, anti-theft alarms, warning devices, and child restraint systems.

B. Purpose of and Need for 1998 Agreement

The decision of the U.S. to sign the 1998 Agreement and participate in a global standards development process is a critical step toward a cooperative worldwide search for best safety and environmental practices. The U.S. does not have a vote under an existing earlier UN/ECE agreement regarding wheeled vehicles, equipment and parts, known as the 1958 Agreement, since the U.S. is not a signatory to that agreement.[3] This has limited the ability of the U.S. to influence the substance of the standards adopted under the 1958 Agreement.

Becoming a Contracting Party to the 1998 Agreement accomplishes several purposes for the U.S. It gives the U.S. a vote in the establishment of global technical regulations for wheeled vehicles, equipment and parts under the UN/ECE and enables the U.S. to take a leading role in effectively influencing the selection of the level of vehicle safety regulations worldwide. This is appropriate since the U.S. has been at the forefront in collecting and analyzing crash data, conducting vehicle safety research, analyzing the impacts of regulatory alternatives, and requiring high levels of safety. The Agreement ensures that U.S. standards and their benefits will be properly considered in any effort to adopt a harmonized global technical regulation.

C. Issue of Public Participation

Various public interest groups have expressed concerns about the opportunities for the public to participate in activities related to the 1998 Agreement. Similar concerns have been expressed by other groups about other international agreements providing for the establishment of international standards by organizations that meet outside the U.S. The common concern is that global technical regulations will be established abroad without adequate involvement of the American public. In the case of the 1998 Agreement, groups have also expressed the view that the decisions made in Geneva could pre-determine the outcome of subsequent rulemaking proceedings in the U.S., even though Federal motor vehicle safety standards (FMVSSs) cannot be amended or established without satisfaction of the Administrative Procedure Act and the statutory provisions governing the FMVSSs.

D. Purpose of This Notice

The purpose of this notice is to obtain oral and written comments on a draft policy statement that has two purposes. First, it sets forth a listing of priorities that will guide this agency during its participation in activities under the 1998 Agreement when the Agreement enters into force. Second, it sets forth the practices and activities that this agency could use to ensure that the public has the information and opportunity necessary to follow the development of global technical regulations under the 1998 Agreement and to provide its views, beginning at the earliest stages, regarding those regulations.

II. Background

A. May 1998 Final Rule on Process for Assessing Safety Performance and Functional Equivalence of U.S. and Foreign Standards

On May 13, 1998, this agency published a final rule reaffirming its policy of focusing its international harmonization activities on identifying those foreign vehicle safety standards that clearly reflect best practices, i.e., that require significantly higher levels of safety performance than the counterpart U.S. standard. (63 FR 26508) NHTSA's policy is to upgrade its standards to the level of those foreign standards.

NHTSA emphasized that three goals must remain of primary importance as this agency participates in efforts to explore the possibility of harmonizing its standards with those of other countries and regions in appropriate circumstances. First, this agency must ensure that there is no degradation of the safety provided by a regulation as a result of achieving harmonization. Second, this agency must preserve the quality and transparency of its regulatory process by inviting all interested parties to be heard and duly considered. Third, this agency must preserve its ability to respond, through future rulemaking, to changing safety technology and problems and make appropriate improvements in its safety standards.

The final rule also announced this agency's policy regarding instances in which its comparison of standards indicates that the safety performance required by a foreign standard is not significantly higher, but is still better than or at least as good as that required by the counterpart U.S. standard. In those instances, this agency said that it will consider the possibility of amending the U.S. standard to allow manufacturers to comply with either standard or to harmonize the U.S. standard with the foreign standard.

Since the final rule was issued slightly more than one month before the June 1998 UN/ECE meeting in Geneva at which the U.S. expected to sign the 1998 Agreement, NHTSA reaffirmed in the final rule its commitment to

[2] At the opening of the 1998 agreement for signature, representatives of the European Community and Japan indicated interest in becoming signatories. The representative of the European Community said that the Community is ''committed to completing its internal procedures at the earliest opportunity in order to sign the Agreement without delay.'' Although the representative of Japan did not refer to any specific time frame for Japan's accession to the Agreement, he did state that Japan believes that ''it is very important that many countries join this process and cooperate in this forum towards the global harmonization of technical regulations.''

[3] In 1955, the United Nations Economic Commission for Europe established, under the Inland Transport Committee, the Working Party on the Construction of Vehicles (commonly known as WP 29). In 1958, WP 29 created procedures for establishing uniform regulations regarding motor vehicles, equipment and parts, including those affecting road safety. These procedures were codified in 1958 by UN/ECE Agreement Concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts, (commonly referred to as the 1958 Agreement). The 1958 Agreement also established a system for mutual recognition of each party's approvals of motor vehicle equipment and parts, as long as these approvals were granted in accordance with the 1958 Agreement's conditions. While the original 1958 Agreement dealt primarily with safety issues, in the late 1960s, the Working Group on Pollution and Energy and the Working Group on Noise were instituted as subgroups of WP 29 for the purpose of developing emission and noise regulations respectively, and in 1995, the agreement was revised to include the development of regulations concerning pollution and energy. There are now six Working Groups: the Working Group on Noise; the Working Group on Lighting and Light-Signalling; the Working Group on Pollution and Energy; the Working Group on Brakes and Running Gear; the Working Group on General Safety Provision; and the Working Group on Passive Safety.

Fifty-five countries, including the United States, participate in WP 29. However, only 28 European countries are party to the 1958 Agreement. The WP 29, through its administration of the 1958 Agreement, is the only multinational governmental forum currently coordinating the development of motor vehicle safety and environmental regulations. The 1958 Agreement has provided the European countries with a U.N.-based forum to promulgate their automotive regulations within Europe. More recently, this regulation development forum has become a reference source for motor vehicle regulations for many other parts of the world, which has expanded the adoption of European regulations rather than those of the United States.

transparency and public participation in connection with international harmonization activities. With respect to the implementation of the 1998 Agreement, this agency emphasized that it would not only keep the public advised of the key activities and make available key documents relating to the development of vehicle safety standards under the 1998 Agreement, but also provide appropriate, and timely, opportunities for obtaining public input regarding the merits of these matters. This agency said that it would elaborate more fully on its procedures regarding transparency and public participation in the near future.

B. June 1998 Public Meeting on Initial Plans for Promoting Public Participation in the Implementation of the 1998 Agreement

In a June 17, 1998 public meeting in Washington, D.C., NHTSA took the next step. It laid out its initial plans for promoting effective public participation at the earliest stage in the consideration of global technical regulations concerning motor vehicle safety. The centerpiece of the plans was a set of activities and practices in the U.S. that would parallel the global technical regulation development process in Geneva. NHTSA said that the activities and practices would include the following measures:

- Access to information. NHTSA will post on its Website information such as a periodically-updated agenda of scheduled meetings of WP 29 and its committees (called working parties of experts) related to the 1998 Agreement; key documents, such as proposed global technical regulations referred under the 1998 Agreement to working parties of experts for their consideration; and working party reports recommending establishment of specific global technical regulations. NHTSA already has worked with the UN/ECE to ensure that the documents generated by WP 29 are accessible on the internet to the public. NHTSA also has worked with the UN/ECE to ensure that the meetings of WP 29 are open to the public.
- Opportunity to be heard. NHTSA will solicit comments from the public at key intervals during the development of global technical regulations. NHTSA will place those comments in the U.S. Department of Transportation's internet-accessible public docket.
- Opportunity to discuss. NHTSA will hold periodic public meetings to discuss developments at recent meetings of WP 29 and its working parties of experts related to the 1998 Agreement.

In addition, this agency invited representatives of the industry and consumer groups and other members of the public to participate as advisers in the U.S. delegation that will attend the meetings of the full membership in Geneva. This agency announced that a public workshop for discussion of the plan will be scheduled and a statement of policy will be published in the **Federal Register** so that the public can review and comment on it.

A broad spectrum of interests were represented at the June public meeting. Among the attendees were representatives of the European Commission, the Japan Automobile Standards Internationalization Center, domestic and foreign motor vehicle manufacturers, and various public interest groups.

Representatives of four public interest groups spoke briefly at the meeting. All four generally supported this agency's planned activities and practices, but urged that even more efforts be made to promote public participation.

Advocates for Highway and Auto Safety (Advocates) said that this agency must do more than offer a chance for the public to comment on technical regulations being developed under the 1998 Agreement. Advocates submitted a paper listing the specific steps that it believed this agency and EPA must take at each of the following three phases of negotiation: before any negotiations begin, during any negotiations, and after negotiations have produced a text of a tentative global technical regulation. For example, it said that this agency must accept public comments before developing its negotiating positions and then must declare those positions before going to Geneva to begin negotiations. If negotiations in Geneva cause this agency to conclude that it is desirable to change a previously declared U.S. negotiating position, this agency's negotiators must first return to the U.S. and seek public comments before actually changing the U.S. position. Before voting on a recommended global technical regulation, this agency must first seek public comment. In addition to providing copies of all key documents, this agency should provide the stated positions of other Contracting Parties to the 1998 Agreement.

The Alliance of Insurance Associations (AIA) endorsed the procedural suggestions made by Advocates. AIA asked that this agency incorporate its public participation measures in a legally binding regulation. That organization also expressed concern about issues related to the World Trade Organization Technical Barriers to Trade Agreement (TBT Agreement).[4] AIA was particularly concerned that a case could be made under the TBT Agreement against U.S. standards that are higher than the technical regulations adopted under the 1998 Agreement. That organization suggested that objecting countries could argue that the U.S. could have and should have adopted a less trade restrictive approach for achieving the safety benefits in question.

Consumers Union (CU) endorsed the statements by Advocates and AIA. CU urged the establishment of a continuing public forum regarding the implementation of the 1998 Agreement. That organization said that this agency's negotiators[5] should, before going to Geneva, discuss options and alternative

[4] One of the agreements of the Uruguay Round administered by the World Trade Organization (WTO) is the TBT agreement. (*http://www.wto.org*) The purpose of the TBT agreement is to ensure that product standards, technical regulations, and related procedures do not create unnecessary obstacles to trade. At the same time, the TBT agreement clearly recognizes that each country has the right to establish and maintain technical regulations for the protection of human, animal, and plant life and health and the environment, and for prevention against deceptive practices.

In the TBT agreement, the term ''standard'' is defined as:

[A] document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

Also, ''technical regulation'' is defined as:

[A] document which lays down product characteristics or their related processes and production methods, including applicable administrative provisions, with which compliance is mandatory [emphasis added]. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labelling requirements as they apply to a product, process or production method.

Thus, in the language of the TBT agreement, when a government acts to accept a voluntary standard to make it mandatory, the resulting document is a technical regulation. A measure used to ascertain compliance with a standard or technical regulation is a conformity assessment procedure.

The TBT agreement states that, where technical regulations are required and relevant international standards exist or their completion is imminent, WTO-member countries shall use them, or the relevant parts of them, as a basis for their processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, technical regulations, except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued. Further, the agreement states that, with a view towards harmonizing technical regulations on as wide a basis as possible, WTO-member countries shall play a full part within the limits of their resources in the preparation by appropriate international standards bodies of international standards for products for which they either have adopted or expect to adopt technical regulations.

[5] NHTSA negotiators include both its representative to WP 29 as well as its representatives on the working parties of experts.

U.S. negotiating positions, how negotiations might go, and where and how far U.S. can or should go in negotiations. CU said that the negotiators should also conduct post-negotiation debriefings. CU mentioned two models that NHTSA could follow in promoting public participation in the implementing of the 1998 Agreement: the U.S. Codex [6] delegation and the U.S. Department of Agriculture's Food Safety Inspection Service. CU urged NHTSA to choose the U.S. Codex delegation, calling it the better of the two models.

The Insurance Institute for Highway Safety expressed support for the views of the other groups and stated that NHTSA's policy with respect to harmonization should always be to harmonize upward and to identify and adopt best safety practices.

III. Highlights of 1998 Agreement

To aid persons unfamiliar with the 1998 Agreement in gaining an understanding of its provisions, this agency has summarized the key aspects below. The complete text of the Agreement may be found on the Internet at the following address: http://www.itu.int/itudoc/un/editrans/wp29/wp29wgs/wp29gen/wp29glob.html.

- The Agreement establishes a global process under the United Nations, Economic Commission for Europe (UN/ECE), for developing and harmonizing global technical regulations ensuring high levels of environmental protection, safety, energy efficiency and anti-theft performance of wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles. Motor vehicle engines are included. (Preamble, Art. 1)
- Members of the ECE, as well as members of the United Nations that participate in ECE activities, are eligible to become Contracting Parties to the 1998 Agreement. Specialized agencies and organizations that have been granted consultative status may participate in that capacity. (Art. 2)
- The Agreement will enter into force by September 26, 1999, *if* a minimum of five (5) countries or regional economic integration organizations (e.g., the European Community (EC)) have become Contracting Parties. The five must include the EC, Japan, and U.S. (Art. 11)

If the Agreement does not enter into force by that date, it will enter into force thereafter when a minimum of eight (8) countries or regional economic integration organizations become Contracting Parties. At least one of the eight must be either the EC, Japan, or the U.S. (Art. 11)

- The Agreement explicitly recognizes the importance of continuously improving and seeking high levels of safety and environmental protection and the right of national and subnational authorities, e.g., California, to adopt and maintain technical regulations that are more stringently protective of health and the environment than those established at the global level. (Preamble)
- The Agreement explicitly states that one of its purposes is to ensure that actions under the Agreement do not promote, or result in, a lowering of safety and environmental protection within the jurisdiction of the Contracting Parties, including the subnational level. (Art. 1)
- To the extent consistent with achieving high levels of environmental protection and vehicle safety, the Agreement also seeks to promote global harmonization of motor vehicle and engine regulations. (Preamble)
- The Agreement emphasizes that the development of global technical regulations will be transparent. (Art. 1)

Annex A provides that the term ''transparent procedures'' includes the opportunity to have views and arguments represented at:

(1) meetings of Working Parties through organizations granted consultative status; and

(2) meetings of Working Parties and of the Executive Committee through pre-meeting consulting with representatives of Contracting Parties.

- The Agreement provides two different paths to the establishment of global technical regulations. The first is the harmonization of existing standards. The second is the establishment of a new global technical regulation where there are no existing standards. (Article 6.2 and 6.3)
- The process for developing a harmonized global technical regulation includes a technical review of existing regulations of the Contracting Parties and of the UN/ECE regulations, as well as relevant international voluntary standards (e.g., standards of the International Standards Organization [7]). If available, comparative assessments of the benefits of these regulations (also known as functional equivalence assessments) are also reviewed. (Art. 1.1.2, Article 6.2)
- The process for developing a new global technical regulation includes the assessment of technical and economic feasibility and a comparative evaluation of the potential benefits and cost effectiveness of alternative regulatory requirements and the test method(s) by which compliance is to be demonstrated. (Article 6.3)
- To establish any global technical regulation, there must be a consensus vote. Thus, if any Contracting Party votes against a recommended global technical regulation, it would *not* be established. (Annex B, Article 7.2)
- The establishment of a global technical regulation does not obligate Contracting Parties to adopt that regulation into its own laws and regulations. Contracting Parties retain the right to choose whether or not to adopt any technical regulation established as a global technical regulation under the Agreement. (Preamble, Article 7)
- Consistent with the recognition of that right, Contracting Parties have only a limited obligation when a global technical regulation is established under the Agreement. If a Contracting Party voted to establish the regulation, that Contracting Party must initiate the procedures used by the Party to adopt such a regulation as a domestic regulation. (Article 7)

For the U.S., this would likely entail initiating the rulemaking process by issuing an Advanced Notice of Proposed Rulemaking (ANPRM) or a Notice of Proposed Rulemaking (NPRM). If the U.S. were to adopt a global technical regulation into national law, it would do so in accordance with all applicable procedural and substantive statutory provisions, including the Administrative Procedure Act, 5 U.S.C. § 553 et seq., the Vehicle Safety Act, and comparable provisions of other relevant statutes, such as the Clean Air Act.

- The Agreement allows for global technical regulations to contain a ''global'' level of stringency for most

[6] The U.S. Codex delegation consists of officials from the U.S. Department of Agriculture, the U.S. Food and Drug Administration, and the U.S. Environmental Protection Agency. They participate in the activities of the Codex Alimentarius Commission. The Codex is the major international mechanism for promoting the health and economic interests of consumers, while encouraging fair international trade in food. The U.S. Codex Manager coordinates all Codex activities within the United States. The Manager, who reports to the Under Secretary for Food Safety in USDA, is assisted by the U.S. Codex Office, housed in the Food Safety and Inspection Service, USDA.

[7] The International Standards Organization (ISO) is a non-governmental, worldwide federation of national standards bodies from approximately 130 countries. (*http://www.iso.ch*) It was established in 1947. Its mission is to promote the development of standardization and related activities in the world with a view to facilitating the international exchange of goods and services, and to developing cooperation in the spheres of intellectual, scientific, technological and economic activity. Its work is carried out through a hierarchy of technical committees, subcommittees, and working groups.

parties and 'alternative' levels of stringency for developing countries. In this way, all countries, including the least developed ones, can participate in the development, establishment and adoption of global technical regulations. It is anticipated that a developing country may wish to begin by adopting one of the lower levels of stringency and later successively adopt higher levels of stringency. (Article 4)

IV. Discussion of the Draft Policy Statement and Response to Public Comments at the June 17 Public Meeting

Publication of a policy statement. In this notice, this agency sets forth a draft policy statement that generally describes its priorities and its planned activities and practices for promoting public participation. NHTSA will revise the statement as appropriate in response to public comment and publish it in the **Federal Register**. NHTSA has tentatively chosen this approach, instead of a binding regulation as suggested by AIA, in recognition of the newness both of the Agreement and of NHTSA's involvement in activities under an international agreement to which the U.S. is a contracting party. Particularly at the beginning, there must be a sufficient degree of flexibility so that the activities and procedures can evolve easily and quickly as the U.S. and other Contracting Parties gain experience in using limited resources to implement the Agreement in a manner that advances safety and environmental protection and involves the public in that effort.

While the need for flexibility must be met, NHTSA recognizes that there is also an equal need for identifying this agency's specific activities and practices that will provide the three basic elements outlined at the June public meeting. Those elements are: access to information, opportunity to be heard, and opportunity to discuss. Activities and practices relating to each of those elements are clearly set out in the draft policy statement.

Access to information. This agency will publish an annual calendar of meetings and listing of global technical regulations under consideration. To promote the availability of documents as they are generated under the 1998 Agreement and become available in English, this agency will provide the addresses to the Websites of the UN/ECE and the International Telecommunication Union (ITU):

United Nations Economic Commission for Europe (UN/ECE)
http://www.unece.org/Welcome.html
Inland Transport Committee (ITC) of the UN/ECE
http://www.unicc.org/unece/trans/
Working Party on the Construction of Vehicles (WP 29) of the ITC
http://www.unicc.org/unece/trans/main/unecewp.htm
Working parties of experts of WP 29
http://www.itu.ch/itudoc/un/editrans/wp29/wp29wgs.html

The ITU maintains a Website that covers, among other subjects, the activities of the Inland Transport Committee of the UN/ECE and its various working parties. (*http://www.itu.ch/itudoc/un/editrans.html*) Within the limits of its resources, and primarily with respect to the development of particularly important global technical regulations, this agency will also place the documents in the internet-accessible DOT docket and place key documents on a word-searchable location in its Website.

Opportunity to be heard. This agency plans to seek public comment at two points during the development of global technical regulations. In the case of a proposal to be submitted by the U.S. for a global technical regulation, the first point would be before the proposal is submitted.[8] In the case of a proposed global technical regulation submitted by a Contracting Party other than the U.S., the first point at which the agency would solicit public comment would be when the proposal is referred under the 1998 Agreement to a working party of experts for consideration. In all cases, the second point would be when and if a working party of experts issues a report recommending the adoption of a global technical regulation.

NHTSA will seek comments by publishing a request for comments. In the case of a proposal that the U.S. contemplates offering, the notice would describe the contemplated proposal and assess its impacts. This agency would fully consider those comments and make any appropriate changes to its proposal for a global technical regulation, if commenters submit sufficient supporting technical data and analysis. In the case of a proposal submitted by another Contracting Party, the U.S. would likely issue a short notice summarizing the proposal and seeking comments.

Opportunity to discuss. This agency plans to hold informal meetings to brief the public about recent and anticipated deliberations and standards development work under the 1998 Agreement at those meetings. In addition, interested parties may raise questions related to those subjects. The public meetings would be scheduled so that one would precede each of the three annual WP 29 meetings (i.e., in March, June and November).

NHTSA solicits comments on where it should hold its public meetings on activities related to the 1998 Agreement. It also solicits comments on whether these 1998 Agreement meetings should be combined with this agency's existing quarterly public meetings at which it discusses its vehicle rulemaking. Three of those quarterly rulemaking meetings are held in Detroit, Michigan. The fourth is held in Washington, D.C.

Discussion of U.S. negotiating positions. To the extent consistent with retaining the ability to negotiate effectively with other Contracting Parties, NHTSA would use the quarterly meetings to keep interested parties generally informed about the U.S. negotiating positions on issues under the 1998 Agreement. However, this agency tentatively concludes that it would be impracticable to adopt the suggestion by Advocates at the June 17 public meeting that the NHTSA negotiators should return to the U.S. and justify any departure from a previously announced negotiating position under that Agreement. Having to return to the U.S., as suggested by Advocates, would make negotiations very lengthy and unwieldy.

Post-negotiation debriefings. NHTSA believes that this need can be met at the public meetings to be held on activities related to the 1998 Agreement.

Establishment of a continuing forum. This agency believes that the periodic meetings will provide the public not only with an opportunity to discuss recent and future developments under the 1998 Agreement, but also general procedural issues involved in the implementation of that Agreement.

Following the model of the U.S. Codex delegation or FDA in providing for public participation.

At the suggestion of CU, the NHTSA Director of International Harmonization met with Dr. F. Edward Scarbrough, the U.S. Manager for Codex, on August 13, 1998. Dr. Scarbrough described the efforts made by the members of the U.S. Codex delegation to develop and publicize a general description of the U.S. position regarding the agenda items to be discussed at upcoming meetings of the committees of Codex Alimentarius Commission. By way of example, he mentioned the descriptions that would be provided and discussed the next day at a public meeting held in preparation for the September 1998 meeting of the

[8] If the proposal concerns issues on which this agency has recently obtained public comment as part of a rulemaking proceeding, it would not seek further comment before submitting the proposal.

Codex Committee on General Principles. (The notice announcing that meeting was published at 63 Fed. Reg. 42608, on August 10, 1998.)

He also noted the notice published by the FSIS on February 12, 1998 about duties of U.S. Government delegates and delegation members including non-government members. (63 Fed. Reg. 7118) That notice:

> describes the activities of the Codex Alimentarius Commission (Codex); describes the duties of the United States delegate and alternate delegate to Codex committees; provides the criteria and procedures to be used in selecting non-government members to various United States delegations to Codex committees; describes the appropriate role of non-government members on Codex committees; identifies the manner in which the public will be informed of and may participate in Codex activities; and requests comments on these matters.

With respect to advising the public of the positions of the U.S. Government about Codex activities, paragraph V.C. of that notice states:

> The United States delegate will notify members of the public who have indicated an interest in a particular Codex committee's activities of the status of each agenda item and the United States Government's position or preliminary position on the agenda item, if such a position has been determined. The United States delegate may request members of the public who have indicated an interest in a particular Codex committee's activities to submit written comments. Public meetings may also be held to receive comments.

The content and disposition of public comments is discussed in paragraph V.E. of the February notice:

> Public comments relevant to Codex committee activities should be supported by as much data or research as possible and such data or research should be properly referenced to enhance the persuasive impact of the comments. The United States delegate will consider all comments received but will not be bound to agree with any comment. The views expressed in these comments may or may not be presented by the United States delegate to a Codex committee.

Dr. Scarbrough also discussed the role and responsibilities of non-government members of U.S. delegations. For example, he noted that the February 1998 notice stated that while the U.S. delegate will, to the extent feasible, consult and seek recommendations for non-government members, the U.S. delegate will not be obliged to present at any Codex committee session any recommendation made by a non-government member.

NHTSA has attempted to reflect the results of its talk with Dr. Scarbrough in the draft policy statement. However, this agency is open to further suggestions and perspectives. Accordingly, this agency invites commenters to address the following question: In establishing the activities and practices that NHTSA will use in providing for public participation in the implementation of the 1998 Agreement, what specific lessons should be drawn from the experiences of the Food and Drug Administration (FDA) and the Department of Agriculture's Food Safety Inspection Service (FSIS) with respect to the Codex, and FDA with respect to the International Conference of Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) (drug safety)?[9] [10]

Interested persons desiring information regarding these other harmonization activities may wish to consult the following Websites:

US Codex Office
http://www.fsis.usda.gov/OA/codex/;
Codex Alimentarius Commission:
http://www.fao.org/waicent/faoinfo/economic/esn/codex/
FDA (including the ICH)
http://www.fda.gov/oia/homepage.htm

Best safety practices. This agency reaffirms its prior statements that the identification and adoption of best safety practices is its highest priority in its international harmonization activities.

TBT Agreement issues. The U.S. is well-positioned to defend its vehicle safety standards against a complaint under the TBT Agreement that the standard is higher than the technical regulations adopted under the 1998 Agreement as well as against a complaint that the standard is more trade restrictive than necessary to achieve the safety benefits in question. NHTSA takes great care in establishing the safety needs for its standards and in assessing the benefits and other impacts of its safety standards. Both the TBT Agreement and the 1998 Agreement expressly recognize the right of nations to adopt safety standards more stringent than existing international standards.

V. Other Methods for Promoting Public Participation

Currently, the motor vehicle industry and consumers are represented at meetings of WP 29 and of its working parties of experts by international organizations that have been granted consultative status by the Economic and Social Council of the United Nations. The industry is represented by the Organisation Internationale Des Constructeurs D'Automobiles (OICA) (International Organization of Motor Vehicle Manufacturers), while consumers are represented by Consumers International. Those organizations participate in the discussions, but cannot vote.

The 1998 Agreement expressly provides for participation of any specialized agency and any organization, including intergovernmental organizations and non-governmental organizations. Paragraph 2.3 of Article 2 provides

> Any specialized agency and any organization, including intergovernmental organizations and non-governmental organizations, that have been granted consultative status by the Economic and Social Council of the United Nations, may participate in that capacity in the deliberations of any Working Party during consideration of any matter of particular concern to that agency or organization.

At the June 17 public meeting, the Administrator raised the possibility of members of the public participating as private sector advisers on a U.S. delegation at meetings under the 1998 Agreement. This agency notes that if a manufacturer or public interest group were to take advantage of this opportunity, it would have to provide its own funding. The selection of private sector advisers and protocol governing their participation are set forth in the final guidelines published by the Department of State concerning the participation of representatives of affected private sector interests to serve as advisers on U.S. delegations to international conferences, meetings and negotiations (44 Fed. Reg. 17846; March

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[9] The ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA). The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

[10] For information concerning FDA and FSIS involvement in the Codex and ICH, see the following **Federal Register** notices or contact those agencies directly:

- FDA, ''International Harmonization; Policy on Standards,'' (October 11, 1995; 60 FR 53078).
- FSIS, ''Codex Strategic Planning Meeting,'' (May 1, 1997; 62 Fed. Reg. 23745).
- FDA, ''Consideration of Codex Alimentarius Standards,'' (July 7, 1997; 62 FR 36243).

23, 1979). This agency solicits comments on the extent of public interest and ability to serve as private sector advisers.

VI. Public Workshop

All interested persons and organizations are invited to attend the workshop. To assist interested parties to prepare for the February 3, 1999 workshop, this agency has developed a preliminary agenda, shown below, of introductory presentations and of major topics for discussion at the meeting. Requests for this agency to consider adding additional topics should be addressed to Ms. Julie Abraham at the address or numbers given above.

A. Purpose

This agency is holding a workshop to facilitate the interactive exchange and development of ideas among all participants. The purpose is to present and discuss the planned activities and practices for facilitating public participation in the implementation of the 1998 Agreement. NHTSA hopes that through an interactive discussion, opportunities to improve the draft policy statement can be identified. NHTSA plans to consider the information and views presented at the workshop and in the subsequent written comments in developing the policy statement it will issue.

B. Procedures

This agency intends to conduct the workshop informally. The Director of International Harmonization will preside at the workshop, with the participation of the NHTSA's and EPA's representatives on WP 29's working parties of experts. The Director will first give a brief overview of the 1998 Agreement, followed by brief presentations by agency officials regarding the operation of WP 29 and its work plans. Then the presiding official will discuss all of this agency's planned activities and practices for promoting public participation. As each activity or practice is presented, the participants will be asked for comments and input. At any point during the workshop, and upon request, the presiding official will allow participants to ask questions or provide comments. When commenting, participants should approach the microphone and state their name and affiliation for the record. All participants are asked to be succinct. Participants may also submit written questions to the presiding official and request that they be directed to particular participants.

Any person planning to participate should contact Ms. Julie Abraham at the address and telephone number given at the beginning of this notice, no later than 10 calendar days before the workshop.

C. Agenda

i. Opening remarks
Ricardo Martinez, Administrator (NHTSA)—10 min.
ii. 1998 Agreement: opportunities for seeking higher levels of safety and broader public participation
Julie Abraham, Director of International Harmonization (NHTSA)—15 min.
iii. WP 29 procedures for developing technical regulations under the 1958 and 1998 Agreements
Ken Feith, Policy Advisor, Office of Air and Radiation (EPA)—20 min.
iv. The U.S. role in the implementation of the 1958 Agreement
WP 29 Working Party of Experts on Lighting and Light-Signalling: recent events and future directions
Richard Van Iderstine, U.S. Representative (NHTSA)—5 min.
WP 29 Working Party of Experts on Pollution and Energy: recent events and future directions
Thomas Baines, U.S. Representative (EPA)—5 min.
WP 29 Working Party of Experts on Noise: recent events and future directions
Ken Feith, U.S. Representative (EPA)—5 min.
WP 29 Working Party of Experts on Passive Safety: recent events and future directions
Dr. William R. S. Fan, U.S. Representative (NHTSA)—5 min.
Case example illustrating the current role of NGO's in the development of a UN/ECE technical regulation Frank Turpin, Office of International Harmonization (NHTSA) (Retired)—10 min.
v. Interactive discussion of public participation in the implementation of the 1998 Agreement [11]
The policy statement
Access to information
Opportunity to comment
Opportunity to discuss
Other measures for promoting public participation
Participation in U.S. delegation

[11] The participants in the interactive discussion are encouraged to discuss the issues on which the agency has solicited comments in the preamble to this notice, i.e.:

What lessons should be drawn from the experiences of the FDA and FSIS with respect to the Codex, and of the FDA with respect to the International Conference of Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) (drug safety)?

VII. Rulemaking Analyses and Notices

Since this request for comment contemplates the establishment of a statement of policy (as opposed to a regulation or rule) that will not have the force and effect of law, this request is not subject to the requirements of the various Executive Orders (e.g., Executive Order 12866), statutes or DOT regulatory policies and procedures for analysis of the impacts of rulemaking. Further, it is not subject to the notice and comment requirements of the Administrative Procedure Act. Nevertheless, this agency has decided to seek public comment on the statement of policy before publishing a final version.

VIII. Comments

This agency invites all interested parties to submit written comments. This agency notes that participation in the public workshop is not a prerequisite for submission of written comments. Written comments should be sent to the address and follow the same requirements specified above in section **ADDRESSES.** It is requested but not required that two 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 the purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to Docket Management. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in this agency's confidential business information regulation. 49 CFR Part 512.

All comments received by NHTSA before the close of business on the comment closing date indicated above for the notice 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 policy statement to be issued will be considered as suggestions for future action. Comments on the notice 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 recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the 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.

Statement of Policy: NHTSA Priorities and Public Participation in the Implementation of the UN/ECE 1998 Agreement on Global Technical Regulations

I. Our Priorities Under the 1998 Agreement

A. Advance vehicle safety by identifying and adopting best safety practices from around the world or by developing new standards reflecting technological advances and current and anticipated safety problems.

B. Seek to harmonize our safety standards with those of other countries, to the extent consistent with maintaining existing levels of motor vehicle safety.

C. Notwithstanding our harmonization efforts, preserve our ability to adopt standards that meet U.S. vehicle safety needs.

D. Ensure the opportunity for public participation, through means such as pre-rulemaking activities and practices.

II. Procedures for Providing Public Information and Facilitating Public Participation

A. Access to information.

1. Annual calendar of activities and list of pending work.

We will publish annually a notice providing (a) a calendar of scheduled meetings of WP 29 and its working parties of experts; and (b) a list of the global technical regulations relating to motor vehicle safety, theft or energy conservation that are being considered by a working party of experts, or that have been recommended by a working party of experts for establishment under the 1998 Agreement.

2. Availability of documents relating to global technical regulations proposed by Contracting Parties and global technical regulations recommended by working parties of experts.

As we obtain English versions of key documents relating to motor vehicle safety, theft or energy conservation that are generated under the 1998 Agreement (e.g., proposals referred to a working party of experts, and reports and recommendations issued by a working party), we will place them in the internet-accessible DOT docket (www.dms.dot.gov). Since documents in the DOT docket are imaged documents, they cannot be word-searched. Within the limits of available resources, we will also place the documents on an international activities page that will be included in our Website. This additional step will give interested persons the ability to word-search the documents.

B. Opportunity to comment.

1. Proposals by Contracting Parties for consideration of global technical regulations.

a. Proposals by the U.S.

Before we submit a proposal for the development of a global technical regulation relating to motor vehicle safety, theft or energy conservation for consideration under the 1998 Agreement, we will publish a notice requesting public comments on our proposal. We will consider those comments before submitting our proposal to the Executive Committee.

(1) U.S. proposal for harmonizing existing technical regulations.

Our notice will compare the proposed harmonized standard and the related existing U.S. standard, including the relative impacts of those standards.

(2) U.S. proposal for establishing a new global technical regulation.

Our notice will discuss (i) the safety, theft or energy conservation problem addressed by the proposal, (ii) the rationale for the proposed approach for addressing the problem, and (iii) the impacts of the proposal.

b. Proposals by Contracting Parties other than the U.S.

After a Contracting Party other than the U.S. submits a proposal for a global technical regulation relating to motor vehicle safety, theft or energy conservation for consideration under the 1998 Agreement, we will place a copy of an English language version of the proposal in the DOT docket and, within the limit of our resources, may also post it on our Website. We will also publish a brief notice summarizing the proposal, indicating where it may be located in the DOT docket (and/or on the internet), and inviting public comment. We will consider those comments in connection with our participation in future deliberations under that Agreement.

2. Recommendations by a working party of experts for the establishment of a global technical regulation.

When a working party of experts issues a report recommending the establishment of any global technical regulation (including one based on one of our proposals) relating to motor vehicle safety, theft or energy conservation, we will place a copy of an English language version of the report in the DOT docket and, within the limit of our resources, may also post it on our Website. We will also publish a brief notice summarizing the recommended regulation, indicating where the report may be located in the DOT docket (and/or on the internet), and inviting public comment. We will consider those comments in connection with our participation in future deliberations under the 1998 Agreement.

(Note: If we subsequently initiate a rulemaking proceeding concerning the subject matter of any document mentioned above in paragraphs 1–3, we will place the comments relating to the document in the docket for that proceeding and address them as appropriate.)

C. Opportunity to discuss.

We will hold public meetings to summarize the events under the 1998 Agreement since the last meeting held pursuant to this policy statement and the anticipated upcoming events. We will also discuss key issues regarding pending standards development work relating to motor vehicle safety, theft or energy conservation under the 1998 Agreement, and public comments regarding those issues. Our representatives on the working parties of experts, and, as appropriate, other agency officials, will also participate in those meetings.

Issued on December 29, 1998.

Julie Abraham,

Director, Office of International Harmonization.

[FR Doc. 98–34827 Filed 12–30–98; 2:37 pm]

BILLING CODE 4910–59–P

Federal Register

Tuesday
January 5, 1999

Part II

Department of Justice

Megan's Law; Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as Amended; Notice; Republication

DEPARTMENT OF JUSTICE

Office of the Attorney General

[A.G. Order No. 2196–98]

RIN 1105–AA56

Megan's Law; Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as Amended

Correction and Republication

Editorial Note: Due to typesetting errors, notice document FR Doc. 98-33377, originally published in the issue of Thursday, December 17, 1998, at pages 69656-69667 is being republished in its entirety.

AGENCY: Department of Justice.

ACTION: Final guidelines.

SUMMARY: The United States Department of Justice is publishing Final Guidelines to implement the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act as amended by Megan's Law, the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, and section 115 of the General Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998.

EFFECTIVE DATE: December 17, 1998.

SUPPLEMENTARY INFORMATION: The Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. 104–236, 110 Stat. 3093 (the ''Pam Lychner Act''), and section 115 of the General Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. 105–119, 111 Stat. 2440, 2461 (the ''CJSA''), amended section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, 108 Stat. 1796, 2038 (codified at 42 U.S.C. 14071), which contains the Jacob Wettlering Crimes Against Children and Sexually Violent Offender Registration Act (the ''Wetterling Act'' or ''the Act''). These legislative changes require conforming changes in the Final Guidelines for the Jacob Wetterling Act and Megan's Law (Pub. L. 104–145, 110 Stat. 1345) that were published by the Department of Justice on July 21, 1997, in the **Federal Register** (62 FR 39009).

The Wettlerling Act generally sets out minimum standards for state sex offender registration programs. States that fail to comply with these standards within the applicable time frame will be subject to a mandatory 10% reduction of formula grant funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program (42 U.S.C. 3756), which is administered by the Bureau of Justice Assistance of the Department of Justice. Any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance. Information concerning compliance review procedures and requirements appears in part VIII of these guidelines.

The Wetterling Act's requirements for compliance may be divided into three categories, each of which carries a different compliance deadline, depending on the legislation from which it derives:

1. *Original requirements.* Many of the provisions of the current formulation of the Wetterling Act derive from the original version of the Act, which was enacted on September 13, 1994, or from the Megan's Law amendment to the Act. These include, for example, the basic requirements to register offenders for at least 10 years; to take registration information from offenders and to inform them of registration obligations when they are released; to require registrants to update address information when they move; to verify the registered address periodically; and to release registration information as necessary for public safety. The deadline for compliance with these features of the Act was September 12, 1997, based on the specification of 42 U.S.C. 14071(g) that states have three years from the Act's original enactment date (i.e., September 13, 1994) to achieve compliance. However, 42 U.S.C. 14071(g) allows a two-year extension of the deadline for states that are making good faith efforts to achieve compliance, and states that have been granted this extension have until September 12, 1999, to comply with these features of the Act.

2. *Pam Lychner Act requirements.* The Pam Lychner Act's amendments to the Wetterling Act created a limited number of new requirements for state registration programs, including a requirement that the perpetrators of particularly serious offenses and recidivists be subject to lifetime registration. The time frame for compliance with these new requirements is specified in section 10(b) of the Pam Lychner Act—three years from the Pam Lychner Act's enactment date of October 3, 1996, subject to a possible extension of two years for states that are making good faith efforts to come into compliance. Hence, barring an extension, states will need to comply with these features of the Act by October 2, 1999.

3. *CJSA requirements.* The CJSA amendments made extensive changes to the Wetterling Act, many of which afford states greater flexibility in achieving compliance. Under the effective date provisions in section 115(c) of the CJSA, states immediately have the benefit of amendments that afford them greater discretion and can rely on these amendments in determining what changes (if any) are needed in their registration programs to comply with the Act. For example, the Act as amended by CJSA affords states discretion concerning the procedures to be used in periodic verification of registrants' addresses, in contrast to the Act's original requirement that a specific verification-form procedure be used. In light of this change, effective immediately, states have discretion concerning the particular procedures that will be used in address verification.

While the CJSA's amendments to the Wetterling Act were largely in the direction of affording states greater discretion, the CJSA did add some new requirements to the Wetterling Act. For example, the CJSA added provisions to promote registration of sex offenders in states where they work or attend school (as well as states of residence) and to promote registration of federal and military sex offenders. The time frame for compliance with new requirements under the CJSA amendments, as specified in section 115(c)(2) of the CJSA, is three years from the CJSA's enactment date of November 26, 1997, subject to a possible extension of two years for states that are making good faith efforts to come into compliance, Hence, barring an extension, states will need to comply with these features of the Act by November 25, 2000.

The final guidelines in this publication identify and discuss separately all of the requirements that states will need to meet by each of the three specified deadlines, thereby making it clear when states will need to be in compliance with each element of the Wetterling Act to maintain eligibility for full Byrne Formula Grant funding.

Summary of Comments on the Proposed Guidelines

On June 19, 1998, the U.S. Department of Justice published Proposed Guidelines in the **Federal Register** (63 FR 33696) to implement the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act as amended by Megan's Law, the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, and section 115 of the General

Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998. The comment period expired on August 18, 1998.

Following the publication of the proposed guidelines, the Department received 9 comment letters, primarily from state law enforcement agencies. These letters contained numerous comments, questions and recommendations, all of which were considered carefully in developing the Final Guidelines. A summary of the comments and responses to them are provided in the following paragraphs.

A. Offense Coverage

One respondent commented that some states appear to be imposing registration requirements on individuals convicted of consensual adult sodomy. As the guidelines state, such offenses are not among the offenses for which the Act requires registration, and registration of persons convicted of such offenses would not further the Act's objectives.

B. Basic Registration Requirements

1. Initial Registration Requirement

One respondent asked about the applicability of the Act's requirements in relation to an offender who is released from custody and immediately moves to another state. In such cases, the state must: (1) inform the offender of the pertinent registration requirements and take information on the offender as prescribed in the Act; and (2) have procedures that ensure that notice is provided promptly to an agency responsible for registration in the state to which the offender moves, as with any other offender who is moving interstate (42 U.S.C. 14071(b)(1), (2) and (5)). The final guidelines include language that clarifies these requirements.

2. Duration of Registration

Two respondents commented on the minimum registration period required by the Act. One respondent noted that its state law currently allows discontinuance of registration ''upon restoration of civil rights,'' while another noted that its state law allows discontinuance of registration after seven years in certain circumstances. As the guidelines state, for persons convicted of offenses within the Act's offense categories, registration may be discontinued prior to 10 years *only* if the underlying conviction is reversed, vacated, or set aside, or if the registrant is pardoned. Thus, laws allowing discontinuance of registration for such persons prior to ten years for any other reason would not be in compliance with the Act.

The requirement of registration for at least 10 years, like the other requirements of the Act, does not have to be applied retroactively to offenders who were convicted prior to the establishment of a conforming registration program. Hence, it is a matter of state discretion whether to allow termination of registration for such offenders after some shorter period of time.

C. Registration in Certain Interstate Contexts

1. Offense Coverage

One respondent inquired whether an offender's new state of residence, or a state in which an offender works or attends school, must register the offender if he or she does not fall into the categories of registration offenses specified in the state's sex offender registration laws. The Act requires states to register—or, in the case of non-resident workers and students, to accept registration information from—persons convicted of the offenses described in 42 U.S.C. 14071(a)(3)(A)–(B) or a comparable range of offenses. Thus, a state must register (or, for non-resident workers and students, accept registration information from) at least those persons to comply with the Act. The coverage of any offenses beyond those offenses is a matter of state discretion. Thus, for example, the Act does not require a state to accept registration information from a non-resident worker or student if that person's state of residence is registering the person on the basis of an offense that is outside of the Act's offense coverage requirements.

2. Notification to Other States

One respondent asked whether, to comply with the Act, a state must enact a statutory requirement providing for notification to other states when an offender moves interstate, or whether it could rely on informal practice to do so. As the guidelines state, in determining compliance, the Act does not require that its standards be implemented by statute. Thus, in assessing compliance with the Act, the totality of a state's rules governing the operation of its registration and notification system will be considered, including administrative policies and procedures as well as statutes. However, a completely informal practice, not adopted by statute and not included in an articulated administrative policy or procedure, would not be sufficient.

D. Requirements Related to Non-Resident Workers and Students

1. General Requirement

One respondent commented that the requirement that non-resident workers and students register both in the state in which they reside and the state in which they are employed places a burden on the non-resident state. The Act itself requires that states accept registration information from out-of-state workers and students (42 U.S.C. 14071(b)(7)). The guidelines cannot alter requirements appearing in the statute.

2. Procedures for Accepting Registration Information

One respondent asked whether states may comply with the requirement to accept registration information concerning non-resident workers and students by having local law enforcement agencies collect the information and then transfer it to the state. This approach is consistent with the Act.

One respondent asked whether registration information must be collected directly from the non-resident workers and students, or whether states may enter into agreements to exchange information on such persons. The Act requires states to ''ensure that procedures are in place to accept registration information from'' these categories of offenders (42 U.S.C. 14071(b)(7)). Thus, states must have some mechanism in place to accept registration information from non-resident workers and students. Should states also wish to enter into agreements for information exchange with other states, they are free to do so under the Act.

3. Offenders to Whom the Registration Requirements Apply

One respondent asked how the number of days of employment in the state should be calculated. More specifically, the respondent asked how to deal with employment involving travel through several states, and whether work-related travel through a state or any amount of time spent working during a day should be counted towards or as a ''day'' of employment in the state. As the guidelines state, the Act requires states to accept registration information from non-residents who are employed ''full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year'' (42 U.S.C. 14071(a)(3)(F). The Act and guidelines do not provide more specific rules concerning such questions as

whether traveling through a state in the course of employment constitutes being employed in the state, or whether there is a lower limit on the amount of time worked during a day that will count as part-time employment. Thus, the resolution of those issues is a matter of state discretion.

One respondent inquired as to the definition of part-time student. The Act defines a ''student'' as a ''person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education.'' (42 U.S.C. 14071(a)(3)(G)). The Act and guidelines do not further define the term ''part-time.'' Thus, is left to the states to apply this term in a manner consistent with the Act.

E. Requirements Related to Federal and Military Offenders

One respondent expressed interest in the federal government's role in sex offender registration, including the National Sex Offender Registry (NSOR) and the registration of federal and military offenders. Another respondent noted that, in order for the state to notify federal authorities if a federal or military offender fails to register, some mechanism must be established to alert the state when such an offender moves into the state. Procedures for state participation in NSOR are described in the guidelines, and the FBI will issue formal regulations governing the operation of NSOR. As the guidelines explain, recent legislation requires federal and military authorities to give notice to state and local authorities concerning the release to their areas of federal and military sex offenders. The responsible federal agencies are in the process of establishing procedures to implement these requirements.

F. Requirements Related to Aggravated Offenders and Recidivists

1. Application of Lifetime Registration Requirement

Two respondents questioned whether the lifetime registration requirements for aggravated offenders and recidivists apply retroactively or prospectively. The final guidelines clarify that the Act requires states to register for life offenders convicted for an aggravated offense, and recidivists convicted of the current offense, where such convictions occur after the adoption by the state of the lifetime registration requirement. However, states remain free to apply the lifetime registration requirement retroactively to offenders convicted prior to their adoption of the requirement, if they so wish. The lifetime registration requirement for aggravated offenders and recidivists was enacted by the Pam Lychner Act, and thus carries a deadline of October 3, 1999, with a possible two-year extension for states making good faith efforts to comply.

One respondent asked how far back a state must look in determining whether an offender has a prior offense that would qualify him or her as a recidivist. There is no time limit under the Act on prior qualifying convictions. As the final guidelines make clear, in determining whether a person has a qualifying prior conviction, states may rely on the methods they normally use in searching criminal records.

2. Definition of Aggravated Offenses

One respondent sought clarification on the aggravated offenses for which lifetime registration is required. As the guidelines state, ''aggravated offense'' refers to state offenses comparable to aggravated sexual abuse as defined in federal law (18 U.S.C. 2241), which principally encompasses: (1) engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence; and (2) engaging in sexual acts involving penetration with victims below the age of 12. Thus, states can comply with this provision by requiring lifetime registration for persons convicted of the state offenses that cover such conduct, i.e., (1) engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence; and (2) engaging in sexual acts involving penetration with victims below the age of 12.

G. Requirements Related to Sexually Violent Predators

1. Waiver

Several respondents expressed concern over the particular requirements regarding sexually violent predators. For example, two respondents noted that their state either does not use a board of experts to designate sexually violent predators or does not include certain representatives on the board that they use. The Act requires that the determination whether a person is a sexually violent predator be made by a court after considering the recommendation of a board with a specified composition (42 U.S.C. 14071(a)(2)(A)). However, the Act also allows the Attorney General to grant a waiver from these requirements where a state has established alternative procedures or legal standards for designating a person as a sexually violent predator (42 U.S.C. 14071(a)(2)(B)). As a result, as the guidelines state, the approach taken to determining whether an offender is a sexually violent predator will be treated as a matter of state discretion.

In addition, the Act allows the Attorney General to approve ''alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders'' in lieu of the specific measure set forth in the Act regarding sexually violent predators (42 U.S.C. 14071(a)(2)(C)). States that wish to request approval under this provision should do so during the compliance review process. States also may consider the adoption of alternative measures at any time after coming into compliance with the Act, and may seek approval from the reviewing authority for such later-developed alternatives.

2. Documentation of Treatment

Two respondents expressed concern with the requirement that the registration information collected on sexually violent predators must include documentation of treatment. The Act requires that, for registrants who have been designated as ''sexually violent predators'' under the Act's definition, the initial registration information must include ''documentation of treatment received for any mental abnormality or personality disorder of the person'' (42 U.S.C. 14071(b)(1)(B)). As the guidelines note, however, in determining whether offenders have received treatment, the officers responsible for obtaining the initial registration information may rely on information that is readily available to them, either from existing records or the offender, and may comply with the requirement to document an offender's treatment history simply by noting that the offender received treatment. Of course, states that wish to include more detailed information about offenders' treatment histories are free to do so.

3. Termination of Sexually Violent Predator Status

One state commented that its law allows certain sexually violent predators to obtain certificates of rehabilitation that terminate sexually violent predator status. As the guidelines make clear, the Act requires lifetime registration once it has been determined that a registrant is a sexually violent predator. Thus, a state would not be in compliance with this feature of the Act if it were to allow registration to be terminated for a person who has been found to be a sexually violent predator on the basis of

a later determination that the person has been ''rehabilitated'' or is no longer a sexually violent predator. However, as noted in the guidelines and in (G)(1) above, the Attorney General may approve alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in the Act regarding sexually violent predators (42 U.S.C. 14071(a)(2)(C)).

H. The National Sex Offender Registry (NSOR)

One respondent had specific questions regarding the interface of its offender tracking system with NSOR. Procedures for state participation in NSOR are described in the guidelines, and the FBI will issue formal regulations governing the operation of NSOR. As the guidelines note, funding is available through the National Sex Offender Registry Assistance Program of the Bureau of Justice Statistics of the United States Department of Justice to facilitate state participation in NSOR and to upgrade state sex offender registries.

Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as Amended

1. General Purposes and Principles of Interpretation

These guidelines carry out a statutory directive to the Attorney General in subsection (a)(1) of the Wetterling Act (42 U.S.C. 14071(a)(1)) to establish guidelines for state registration programs under the Act. Before turning to the specific provisions of the Act, five general points should be noted concerning the Act's interpretation and application.

First, the general objective of the Act is to assist law enforcement and protect the public from convicted child molesters and violent sex offenders through requirements of registration and appropriate release of registration information. The Act is not intended to, and does not have the effect of, making states less free than they were under prior law to impose such requirements. Hence, the Act's standards constitute a floor for state programs, not a ceiling. States do not have to go beyond the Act's minimum requirements to maintain eligibility for full Byrne Grant funding, but they retain the discretion to do so, and state programs do often contain elements that are not required under the Act's standards. For example, a state may have a registration system that covers broader classes of offenders than those identified in the Act, requires address verification for registered offenders at more frequent intervals than the Act prescribes, or requires offenders to register for a longer period of time than the period specified in the Act. Exercising these options creates no problem of compliance because the Act's provisions concerning duration of registration, covered offenders, and other matters do not limit state discretion to impose more extensive or stringent requirements that encompass the Act's baseline requirements.

Second, to comply with the Wetterling Act, states do not have to revise their registration systems to use technical definitions of covered sex offenses based on federal law. Rather, subject to certain constraints, they may use their own criminal law definitions and categories in defining registration requirements. This point is explained more fully below.

Third, the Act's definitions of covered offense categories are tailored to its general purpose of protecting the public from persons who molest or sexually exploit children and from other sexually violent offenders. Hence, these definitions do not include all offenses that involve a sexual element. For example, offenses consisting of consensual acts between adults are not among the offenses for which registration is required under the Act, and requiring registration for persons convicted of such offenses would not further the Act's objectives.

Fourth, the Wetterling Act contemplates the establishment of programs that will prescribe registration and notification requirements for offenders who are subsequently convicted of offenses in the pertinent categories. The Act does not require states to attempt to identify and to prescribe such requirements for offenders who were convicted prior to the establishment of a conforming program. Nevertheless, the Act does not preclude states from prescribing registration and notification requirements for offenders convicted prior to the establishment of the program.

Fifth, the Act sets minimum standards for state registration and notification programs but does not require that its standards be implemented by statue. In assessing compliance with the Act, the totality of a state's rules governing the operation of its registration and notification program will be considered, including administrative policies and procedures as well as statutes.

2. Related Litigation

Some state registration and notification systems have been challenged on constitutional grounds. The majority of courts, and all federal appeals courts, that have dealt with the issue thus far have held that systems like those contemplated by the Wetterling Act do not violate released offenders' constitutional rights. *See e.g., Roe* v. *Office of Adult Probation,* 125 F.3d 47 (2d Cir. 1997) (Connecticut probation office notification policy); *Russell* v. *Gregoire,* 124 F.3d 1079 (9th Cir. 1997) (Washington state act), *cert. denied,* 118 S.Ct. 1191 (1998); *Doe* v. *Pataki,* 120 F.3d 1263 (2d Cir. 1997) (New York act), *cert. denied,* 118 S.Ct. 1066 (1998); *E.B.* v. *Verniero,* 119 F.3d 1077 (3d Cir. 1997) (New Jersey notification provisions), *cert. denied,* 118 S.Ct. 1039 (1998); *Artway* v. *Attorney General,* 81 F.3d 1235 (3d Cir. 1996) (New Jersey registration provision); *Doe* v. *Kelley,* 961 F. Supp. 1105 (W.D. Mich. 1997) (Michigan notification provisions); *Doe* v. *Weld,* 954 F. Supp. 425 (D. Mass. 1996) (Massachusetts registration of juvenile offenders); *State* v. *Pickens,* 558 N.W.2d 396 (Iowa 1997); *Arizona Dep't of Public Safety* v. *Superior Court,* 949 P.2d 983 (Ariz. App. 1997); *Opinion of the Justices to the Senate,* 423 Mass. 1201, 668 N.E. 2d 738 (Mass. 1996); *Doe* v. *Poritz,* 142 N.J. 1, 662 A.2d 367 (N.J. 1995); *State* v. *Ward,* 123 Wash. 2d 488, 869 P.2d 1062 (Wash. 1994). The United States has filed ''friend of the court'' briefs in several of these cases, arguing that sex offender registration and community notification do not impose punishment for purposes of the Ex Post Facto and Double Jeopardy Clauses or violate privacy or liberty interests guaranteed by the federal Constitution.

In a few other cases, however, courts have found that certain applications or provisions of some state systems violate the United States Constitution or provisions of a state constitution. *See, e.g., Doe* v. *Attorney General,* 426 Mass. 136, 686 N.E. 2d 1007 (Mass. 1997) (holding that the Massachusetts act implicates liberty and property interests protected by the Massachusetts constitution, so that the act could not be applied to Doe—who had been convicted of ''indecent assault'' for sexually suggestive touching of an undercover police officer in an area known for consensual sexual activity between adult males—without a prior hearing to determine if he individually presented any threat to persons for whose protection the act was passed; the court did not rule out the possibility that a categorical ''dangerousness''

determination could be justified by certain other conviction offenses); *State* v. *Myers,* 260 Kan. 669, 923 P.2d 1024 (Kan. 1996) (holding that due to the breadth of offenses subject to Kansas registration act and the potentially unlimited scope of notification, Kansas notification provisions violate the Ex Post Facto Clause), *cert. denied,* 117 S.Ct. 2508 (1997). The New Jersey Supreme Court in *Doe* v. *Poritz* (above) also found a state law privacy interest requiring certain procedural protections, and those procedures were further elaborated upon by the Third Circuit in *E.B.* v. *Verniero* (above).

In addition, when these guidelines were written, there were appeals pending in the Second Circuit, *see Doe* v. *Pataki,* 3 F. Supp. 2d 456 (S.D.N.Y. 1998) (finding a federally protected liberty interest sufficient to trigger due process concerns and that New York's law did not provide sufficient due process), appeal pending, 2d Cir. No. ____, in the Sixth Circuit, *see Cutshall* v. *Sundquist,* 980 F. Supp. 928 (M.D. Tenn. 1997) (holding that the Tennessee notification provisions implicate federal and state law privacy and employment interests, requiring procedural protections prior to notification), *appeal pending,* 6th Cir. Nos. 97–6276 & 97–6321, and in the Third Circuit, *see Paul* v. *Verniero,* 3d Cir. No. 97–5791 (from district court's rejection of constitutional privacy challenge to community notification). There was also ongoing litigation in federal district court in Minnesota and in state courts in Ohio and Pennsylvania.

3. Summary and Text of Guidelines

The following guidelines explain the interpretation and application of the Wetterling Act's standards for registration programs and related requirements. All citations in these guidelines to the Act are to the Act's current text, reflecting the Megan's Law, Pam Lychner Act, and CJSA amendments. The detailed explanation is preceded by a table that summarizes the organization of the guidelines, the major elements of the Act, and the time for compliance with each element under the enacting legislation.

Summary and Deadlines for Wetterling Act Compliance

Text of Detailed Guidelines for Wetterling Act Compliance

I. Ten-year Minimum Registration for Persons Convicted of a Criminal Offense Against a Victim Who Is a Minor or a Sexually Violent Offense [September 12, 1997; Possible Two-year Extension]

To comply with subsections (a)(1) and (b)(6)(A) of the Wetterling Act, a state registration program must require current address registration for a period of 10 years for persons convicted of ''a criminal offense against a victim who is a minor'' or a ''sexually violent offense.''

This requirement derives from the Wetterling Act as originally enacted. The time for compliance is accordingly that provided in 42 U.S.C. 14071(g)—Sept. 12, 1997, or Sept. 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance.

The interpretation and application of this requirement are as follows:

A. ''States'' to Which the Act Applies

For purposes of the Act, ''state'' refers to the political units identified in the provision defining ''state'' for purposes of eligibility for Byrne Formula Grant funding (42 U.S.C. 3791(a)(2)). Hence, the ''states'' that must comply with the Act's standards for registration programs to maintain full eligibility for such funding are the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

B. Duration of Registration

Subsection (b)(6)(A) provides that the registration requirement must remain in effect for 10 years following the registrant's release from prison or placement on parole, supervised release, or probation. States may choose to establish longer registration periods, and are required to do so under the Act's standards for certain types of offenders as discussed in parts IV and V of these guidelines. Registration requirements of shorter duration than 10 years are not consistent with the Act. Hence, for example, a state program would not be in compliance with the Act if it allowed registration obligations to be waived or terminated before the end of the 10 year period on such grounds as a finding of rehabilitation or a finding that registration (or continued registration) would not serve the purposes of the state's registration provisions. However, if the underlying conviction is reversed, vacated, or set aside, of if the registrant is pardoned, registration (or continued registration) is not required under the Act.

Also, in light of a proviso in subsection (b)(6), a state need not require registration ''during ensuing periods of incarceration.'' The reference to subsequent ''incarceration'' should be understood to include periods of civil commitment, as well as imprisonment for the commission of another criminal offense, since a state may conclude that it is superfluous to carry out address registration and verification procedures while the registrant is in either criminal or civil confinement. To comply with the Act, a state that does waive registration during subsequent criminal or civil confinement must require that registration resume when the registrant is released, if time remains under the registration period required by the Act.

C. Coverage of Offenses

1. *''Criminal offense against a victim who is a minor''.* The Act requires registration of any person convicted of a ''criminal offense against a victim who is a minor.'' Subsection (a)(3)(A) defines the relevant category of offenses. The general purpose of the definition is to ensure comprehensive registration for persons convicted of offenses involving sexual molestation or sexual

exploitation of minors. ''Minor'' for purposes of the Act means a person below the age of 18.

The specific clauses in the Act's definition of ''criminal offense against a victim who is a minor'' are as follows:

(1)–(2) Clauses (i) and (ii) cover kidnaping of a minor (except by a parent) and false imprisonment of a minor (except by a parent). All states have statutes that define offenses—going by such names as ''kidnaping,'' ''criminal restraint,'' or ''false imprisonment''—whose gravamen is abduction or unlawful restraint of a person. States can comply with these clauses by requiring registration for persons convicted of these statutory offenses whose victims were below the age of 18. It is a matter of state discretion under these clauses whether registration should be required for such offenses in cases where the offender is a parent of the victim.

(3) Clause (iii) covers offenses consisting of ''criminal sexual conduct toward a minor.'' States can comply with this clause by requiring registration for persons convicted of all statutory sex offenses under state law whose elements involve physical contact with a victim—such as provisions defining crimes of ''rape,'' ''sexual assault,'' ''sexual abuse,'' or ''incest''—in cases where the victim was a minor at the time of the offense. Coverage is not limited to cases where the victim's age is an element of the offense (such as prosecutions for specially defined child molestation offenses). It is a matter of state discretion under this clause whether registration should be required for sex offenses that do not involve physical contact, such as exhibitionism offenses.

(4) Clause (iv) covers offenses consisting of solicitation of a minor to engage in sexual conduct. The notion of ''sexual conduct'' should be understood in the same sense as in clause (iii). Hence, states can comply with clause (iv) by consistently requiring registration, in cases where the victim was below the age of 18, based on:

—A conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the object offense would be covered by clause (iii), and

—A conviction for an offense involving solicitation of the victim under any provision defining a particular crime whose elements include soliciting or attempting to engage in sexual activity involving physical contact.

(5) Clause (v) covers offenses consisting of using a minor in a sexual performance. This includes both live performances and using minors in the production of pornography.

(6) Clause (vi) covers offenses consisting of solicitation of a minor to practice prostitution. The interpretation of this clause is parallel to that of clause (iv). States can comply with clause (vi) by consistently requiring registration, in cases where the victim was below the age of 18, based on:

—A conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the object offense is a prostitution offense, and

—A conviction for an offense involving solicitation of the victim under any provision defining a particular crime whose elements include soliciting or attempting to get a person to engage in prostitution.

(7) Clause (vii) covers offenses consisting of any conduct that by its nature is a sexual offense against a minor. This clause is intended to ensure coverage of convictions under statutes defining sex offenses in which the status of the victim as a minor is an element of an offense, such as specially defined child molestation offenses, and other offenses prohibiting sexual activity with underage persons. States can comply with this clause by including convictions under these statutes in the registration requirement. A proviso at the conclusion of the Act's definition of ''criminal offense against a victim who is a minor'' allows states to exclude from registration requirements persons convicted for conduct that is criminal only because of the age of the victim if the perpetrator is 18 years of age or younger. Whether registration should be required for such offenders is a matter of state discretion under the Act.

(8) Considered in isolation, clause (viii) gives states discretion whether to require registration for attempts to commit offenses described in clauses (i) through (vii). However, state discretion to exclude attempted sexual offenses against minors is limited by other provisions of the Act, since any verbal command or attempted persuasion of the victim to engage in sexual conduct would bring the offense within the scope of the solicitation clause (clause (iv), and make it subject to the Act's mandatory registration requirements. Hence, the simplest approach for states is to include attempted sexual assaults on minors (as well as completed offenses) uniformly as predicates for the registration requirement.

2. *''Sexually violent offense''.* The Act prescribes a 10-year registration requirement for offenders convicted of a ''sexually violent offense,'' as well as for those convicted of a ''criminal offense against a victim who is a minor.'' Subsection (a)(3)(B) defines the term ''sexually violent offense.'' The general purpose of the definition is to require registration of persons convicted of rape or rape-like offenses—i.e., non-consensual sexually assaultive crimes involving penetration—regardless of the age of the victim. The definition refers specifically to any criminal offense that consists of aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18 of the United States Code, or as described in the state criminal code), or an offense that has as its elements engaging in physical contact with another person with intent to commit such an offense.

In light of this definition, there are two ways in which a state can satisfy the requirement of registration for persons convicted of ''sexually violent offenses'':

First, a state can comply by requiring registration for offenders convicted for criminal conduct that would violate 18 U.S.C. 2241 or 2242—the federal ''aggravated sexual abuse'' and ''sexual abuse'' offenses—if prosecuted federally. (The part of the definition relating to physical contact with intent to commit aggravated sexual abuse or sexual abuse does not enlarge the class of covered offenses under the federal law definitions, because sections 2241 and 2242 explicitly encompass attempts as well as completed offenses.)

Second, a state can comply by requiring registration for offenders convicted of the state offenses that correspond to the federal offenses described above—i.e., the most serious sexually assaultive crime or crimes under state law, covering non-consensual sexual acts involving penetration— together with state offenses (if any) that have as their elements engaging in physical contact with another person with intent to commit such a crime.

Like the other requirements of the Act, the requirement to register persons convicted of sexually violent offenses, regardless of the age of the victim, establishes only a baseline for state registration programs. Whether registration should be required for additional offenses against adult victims is a matter of state discretion under the Act.

3. *''Comparable * * * range of offenses''.* As a result of language added by the CJSA amendments, states need not comply exactly with the specific offense coverage requirements in subparagraph (A) or (B) of subsection (a)(3). Rather, a state may comply with

the Act by requiring registration for persons convicted of offenses in a ''range of offenses specified by State law which is comparable to or which exceeds'' the range of offenses described in the Act.

This change reflects a practical recognition by Congress that exact state compliance with the Act's offense coverage specifications may be difficult because of the degree of detail in the Act's definitions and because of the variations among different jurisdictions in the terminology and categorizations used in defining sex offenses. *See* H.R. Rep. No. 256, 105th Cong. 1st Sess. 15 (1997). As a result, Congress was concerned that some states ''may inadvertently find themselves out of compliance with the Wetterling Act'' because the state registration provisions ''are not exactly congruent'' with the Act's offense categories, ''even if the offenses covered by the [state] program are much broader in other respects than required by the Wetterling Act.'' *Id.* The language concerning coverage of a ''comparable'' range of offenses was added to address this concern.

States should aim to have their registration offenses fully encompass the offense categories described in the Act and will be assured of compliance with the Act's offense coverage requirements if they do so. However, in light of the CJSA amendments affording a degree of flexibility concerning offense coverage, inadvertent departures from the Act's offense category specifications will not necessarily result in a finding of non-compliance. Such departures will be allowed if, in the judgment of the reviewing authority, they do not substantially undermine the objective of comprehensive registration for persons convicted of crimes involving sexual molestation or sexual exploitation of minors, and persons convicted of rape or rape-like crimes against victims of any age.

In addition, in assessing compliance, the reviewing authority may consider whether a state program imposes registration requirements that are broader in other respects than the offense coverage specifications of the Act. For example, consistently requiring registration for persons convicted of attempted offenses, and of sexual assaults against adult victims other than rape-like offenses, goes beyond the Act's mandatory standards. Such additional coverage may be considered by the reviewing authority in deciding whether the overall offense coverage under a state program ''is comparable to or * * * exceeds'' the Act's offense coverage specifications.

D. Coverage of Offenders

1. *Resident offenders convicted in other states.* In addition to the Act's requirement that states register their own offenders in the pertinent categories, subsection (b)(7) of the Act requires states, as provided in these guidelines, to include in their registration programs residents who were convicted in other states.

To comply with this requirement, states must apply the Act's standards to residents who were convicted in other states of a criminal offense against a victim who is a minor or a sexually violent offense (as defined in the Act). Specifically, states must require such persons to promptly provide current address information to the appropriate authorities when they establish residence in the state, and thereafter must apply to such persons all of the Act's standards relating to treatment of registered offenders following release including reporting of subsequent changes of address, periodic address verification, criminal penalties for registration violations, and release of registration information as necessary for protection of the public. States also should be aware that it is a federal offense for registered offenders to change residence to another state without notifying the new state of residence and the FBI. *See* 42 U.S.C. 14072(g)(3) and (i).

The durational requirements for registration of offenders convicted in other states are the same as those for in-state offenders—registration for at least 10 years or for life as provided in subsection (b)(6) of the Act. If a portion of the applicable registration period has run while the registrant was residing in another state, a new state of residence may give the registrant credit for that period. For example, if a person required to register for 10 years under the Act's standards has lived for six years following release in the state of conviction, another state to which the registrant moves at that point does not have to require registration for more than the four remaining years.

2. *Juvenile delinquents and offenders.* The Act's registration requirements depend in all circumstances on conviction for certain types of offenses. Hence, states are not required to mandate registration for juveniles who are adjudicated delinquent—as opposed to adults convicted of crimes and juveniles convicted as adults—even if the conduct on which the juvenile delinquency adjudication is based would constitute an offense giving rise to a registration requirement if engaged in by an adult. However, nothing in the Act prohibits states from requiring registration for juvenile delinquents, and the conviction of a juvenile who is prosecuted as an adult does count as a conviction for purposes of the Act's registration requirements.

3. *Tribal offenders.* The Act does not impose any requirements relating to registration of persons convicted of sex offenses in Indian tribal courts. However, a sex offender convicted in an Indian tribal court whose presence is unknown to state authorities or Indian tribal authorities raises the same public safety concerns as an unregistered offender convicted of a similar offense in a state court. States are accordingly encouraged to require registration for sex offenders subject to their jurisdiction who were convicted in Indian tribal courts and to work with tribal authorities to ensure effective registration for such persons.

4. *Protected witnesses.* The Act requires current address registration but does not dictate under what name a person must be required to register. Hence, the Act does not preclude states from taking measures for the security of registrants who have been provided new identities and relocated under the federal witness security program (*see* 18 U.S.C. 3521 *et seq.*) or comparable state programs. A state may provide that the registration system records will identify such a registrant only by his or her new name and that the registration system records will not include the true pre-location address of the registrant or other information from which his or her original identity or participation in a witness security program could be inferred. States are encouraged to make provision in their laws and procedures for the security of such registrants and to honor requests from the United States Marshals Service and other agencies responsible for witness protection to ensure that the identities of these registrants are not compromised.

States should also be aware that 18 U.S.C. 3521(b)(1)(H), enacted by section 115(a)(9) of the CJSA, specifically authorizes the Attorney General to adopt regulations to ''protect the confidentiality of the identity and location'' of protected witnesses who are subject to registration requirements, ''including prescribing alternative procedures to those otherwise provided by Federal or State law for registration and tracking of such persons.'' The Attorney General's policy, to the maximum extent allowed by security considerations, is to require the registration of all federally protected witnesses who otherwise would be required to register. However, in the

Attorney General's discretion, the Attorney General will decide on a case-by-case basis whether these registrations will utilize new identities, modified listings, or other special conditions or procedures that are warranted to avoid inappropriately jeopardizing the safety of the protected witnesses.

II. Registration and Tracking Procedures; Penalties for Registration Violations [September 12, 1997; Possible Two-year Extension]

Paragraphs (1)(A) and (2)(A) of subsection (b) of the Act set out general duties for states in relation to offenders required to register who are released from prison or who are placed on any form of post-conviction supervised release (''parole, supervised release, or probation''). The duties include taking registration information, informing the offender of registration obligations, making the information available at the state level and to local law enforcement, and transmission of conviction data and fingerprints to the FBI. Paragraphs (4)–(5) of subsection (b) of the Act contain requirements that are designed to ensure that registration information will be updated when the registrant changes address and that registrants will continue to be required to register when they move from one state to another during the registration period. Subsection (b)(3)(A) states that ''State procedures shall provide for verification of address at least annually.''

These requirements generally derive from the Wetterling Act as originally enacted. The time for compliance is accordingly that provided in 42 U.S.C. 14071(g)—Sept. 12, 1997, or Sept. 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance. However, one aspect of subsection (b)(1)(A)—a requirement to inform offenders that they must register in states where they work or attend school, in clause (iii)—derives from the CJSA and consequently is subject to a longer deadline for compliance as discussed in part V of these guidelines.

A. Initial Registration Procedures

1. *Taking of registration information and informing offenders of registration obligations.* Subsection (b)(1)(A) provides that ''a State prison officer, the court, or another responsible officer or official'' must carry out specified duties in relation to persons who are required to register. The purpose of this provision is to ensure that offenders are made aware of their registration obligations and to preclude ''honor systems'' in which the initial registration depends on the offender's reporting the information on his own. States have discretion under the Act concerning what types of officials or officers will be made responsible for these initial registration functions.

The specific duties set out in subparagraph (A) of paragraph (1) include: (i) informing the person of the duty to register and obtaining the information required for registration (i.e., address information), (ii) informing the person that he must report subsequent changes of address in the manner provided by state law, (iii) informing the person that if he moves to another state, he must report the change of address in the manner provided by state law and comply with any registration requirement in the new state of residence, (iv) obtaining fingerprints and a photograph if they have not already been obtained, and (v) requiring the person to read and sign a form stating that these requirements have been explained.

In addition, the CJSA amended subparagraph (A)(iii) to require that the person be informed that he also must register in states where he works or attends school. States must comply with this new requirement by November 25, 2000 (subject to a possible two-year extension), as explained in part V of these guidelines.

These informational requirements, like other requirements in the Act, only define minimum standards. Hence, states may require more extensive information from offenders. For example, the Act does not require a state to obtain information about a registrant's expected employment when it releases him, but a state may legitimately wish to know if a convicted child molester is seeking or has obtained employment that involves responsibility for the care of children.

As a second example, states are strongly encouraged to collect DNA samples, where permitted under applicable legal standards, to be typed and stored in state DNA databases. States are also urged to participate in the Federal Bureau of Investigation's (FBI's) Combined DNA Index System (CODIS). CODIS is the FBI's program of technical assistance to state and local crime laboratories that allows them to store and match DNA records from convicted offenders and crime scene evidence. The FBI provides CODIS software, in addition to user support and training, free of charge, to state and local crime laboratories for performing forensic DNA analysis. CODIS permits DNA examiners in crime laboratories to exchange forensic DNA data on an intrastate level and will enable states to exchange DNA records among themselves through the national CODIS system. Thus, collection of DNA samples and participation in CODIS greatly enhance a state's capacity to investigate and solve crimes involving biological evidence, especially serial and stranger rapes.

2. *Transmission of registration information.* Paragraph (2)(A) of subsection (b) states, in part, that the registration information must be promptly made available to a law enforcement agency having jurisdiction where the registrant expects to reside and entered into the appropriate state records system. The purpose of this provision is to ensure that registration information will be available both to local law enforcement and at the state level.

States have discretion under the Act concerning the specific mechanisms and procedures for carrying out this requirement. For example, a state may provide that the responsible official or officer is to transmit the registration information concurrently to an appropriate local law enforcement agency and to the agency responsible for maintenance of the information at the state level, or may provide that the information is to be provided in the first instance only to the local agency or to the state agency, which then transmits it to the other. States also have discretion concerning the form of notification or transmission. For example, in meeting the requirement to make the information available to a law enforcement agency where the registrant will reside, permissible options include written notice, electronic transmission of registration information, and provision of on-line access to registration information.

While the Act generally leaves states discretion concerning specific procedures for taking and transmitting registration information, it does require that the information be ''promptly'' made available to the appropriate recipient agencies (both state and local). This requirement precludes procedures under which lengthy delays are allowed in the transmission or forwarding of the information. For example, in relation to registrants released from prison, state procedures must ensure: (1) that the registration information taken from the offender will be transmitted prior to release or within a short time (e.g., five days) thereafter, and (2) that there is no long delay in any subsequent forwarding of the information required for compliance with the Act, such as provision of the information to an

appropriate local law enforcement agency by a state agency if only the state agency receives the information in the first instance.

The Act leaves states discretion in determining which state record system is appropriate for storing registration information, and which agency will be responsible at the state level for the maintenance of this information. As discussed in Part VI of these guidelines, however, states will be required effective November 25, 2000, to participate in the National Sex Offender Registry (NSOR), which is administered by the FBI. States can ensure that they will be able to freely exchange registration information with the FBI's records systems and comply with the requirement of participation in NSOR by making a ''criminal justice agency'' as defined in 28 CFR 20.3(c) responsible for the registration information at the state level. This continues to leave states with broad discretion concerning the designation of responsibility for the state registry, since ''criminal justice agency'' is defined broadly in the rule and generally includes, *inter alia,* law enforcement agencies, correctional and offender supervision agencies, and agencies responsible for criminal identification activities or criminal history records.

In addition to requiring procedures that ensure the prompt availability of the initial registration information both to local law enforcement and at the state level, paragraph (2)(A) of subsection (b) requires the prompt transmission of conviction data and fingerprints of registrants to the FBI. This should not be understood as requiring duplicative transmission of conviction data and fingerprints to the FBI at the time of initial registration if the state already has sent this information to the FBI (e.g., at the time of conviction).

3. *Fingerprinting.* The final subsection of the Wetterling Act—which should be designated as subsection (h) but is designated as a second subsection (g) because of a technical drafting error in section 115(a)(3) of the CJSA—relates to a requirement under the Pam Lychner Act that certain offenders register directly with the FBI. In conjunction with other provisions of the Pam Lychner Act, it requires that fingerprints be obtained from such offenders by the FBI or by a local law enforcement official pursuant to regulations issued by the Attorney General. However, section 115(a)(7) of the CJSA deferred the effective date for direct FBI registration of certain offenders and issuance of related regulations. Hence, the final subsection of the Wetterling Act does not impose any requirements on the states at the present time.

B. Change of Address Procedures

1. *Intrastate moves.* Subsection (b)(4) provides that registrants are to report changes of address in the manner provided by state law. It further provides that state procedures must ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and is entered into the appropriate state records or data system.

The purpose of this provision is to ensure that current address information will continue to be available both to local law enforcement and at the state level. To comply with this part of the Act, states must require registrants to report changes of address within the state in a manner that ensures that information concerning the new address will promptly be made available to local law enforcement in the new place of residence and at the state level. Thus, states must require registrants to report changes of address prior to moving, or by some short time (e.g., 10 days) after moving.

States have discretion under the Act concerning specific mechanisms and procedures for reporting the updated address information and ensuring that it reaches the appropriate recipients. For example, many states require the registrant to notify local law enforcement agencies (e.g., local sheriffs' offices) in the place he is leaving and the place to which he is going and then require one of these local agencies to notify the agency responsible for maintenance of registration information at the state level. Alternatively, a state may require the registrant to directly notify a central registration agency at the state level, which then makes the information available to an appropriate local law enforcement agency. Another possibility is to require the registrant to report the change of address to a third party, such as a probation officer responsible for his supervision, who then is responsible for notifying a law enforcement agency in the new place of residence and the state registration agency.

The choice among these alternatives or the election of other alternatives beyond those described is a matter of state discretion. States will be in compliance as long as the procedures adopted ensure the prompt availability of the updated address information to law enforcement in the relevant local jurisdiction and at the state level.

2. *Interstate moves.* Subsection (b)(5) states that a registrant who moves to another state must report the change of address to the responsible agency in the state he is leaving and must comply with any registration requirement in the new state of residence. It further provides that the procedures of the state the registrant is leaving must ensure that notice is provided promptly to an agency responsible for registration in the new state of residence, if that state requires registration.

The purpose of this provision is to ensure a gap-free nationwide network of state registration programs that reliably tracks all offenders throughout the applicable period of registration and ensures that offenders cannot evade registration obligations by moving from one state to another. Hence, a state's procedures must require the registrant to report his departure to a responsible agency in the state, and must provide for prompt notice of the registrant's move by an agency in the state to the responsible registration authority in the new state of residence. An ''honor system'' approach, under which it is left to the registrant to notify the registration authority in the new state of residence on his own, does not satisfy the Act's requirements.

As discussed in part I.D.1 of these guidelines, the Wetterling Act's registration requirements ''follow the registrant'' if he moves to another state, and any state in which he establishes residence must include him in its registration program if registration is still required under the Wetterling Act's standards. This includes requiring the registrant to continue to register for at least the remainder of the Act's minimum ten-year registration period and to register for life if he is in a lifetime registration category under subsection (b)(6)(B) of the Act. Hence, the state a registrant is leaving is strongly encouraged to provide as part of its notice to the new state of residence sufficiently detailed information concerning the registrant's offenses and status to enable the new state to register him without difficulty in the appropriate category and for the appropriate amount of time.

In some instances, an offender convicted in a state may never be registered in that state as a resident, because the offender goes to live in another state immediately upon release from imprisonment or sentencing to probation. The requirement under subsection (b)(5) that the state of conviction promptly notify a responsible registration agency in the state where the offender will reside

remains applicable in such situations. In addition, a number of the Act's requirements under subsection (b)(1)–(2) remain relevant and applicable in relation to such an offender. These include: taking information concerning the offender's expected place of residence; informing the offender of the obligation to comply with any registration requirement in the state where he will reside and also to register in a state where he works or attends school; obtaining fingerprints and a photograph, if they have not already been obtained; obtaining a signed acknowledgment; and ensuring that conviction data and fingerprints are promptly transmitted to the FBI.

C. Periodic Address Verification

Subsection (b)(3)(A) requires that state procedures provide for the verification of registrants' addresses at least annually. The purpose of the requirement of periodic address verification is to ensure that the authorities will become aware if a registrant has moved away from the registered address and has failed to report the change of address. Such procedures are obviously important for effective tracking of sex offenders and enforcement of registration requirements.

As a result of changes made by the CJSA amendments, the particular approach to address verification is a matter of state discretion under the Act. For example, some states verify addresses by having the responsible state or local agency annually send to the registered address a non-forwardable address verification form, which the registrant is required to sign and return within 10 days or some other limited period. This is one means by which states may comply with the verification requirement under subsection (b)(3)(A). The legislative history of the CJSA amendments to the Act noted other possible approaches: ''A review of State sex offender registry laws indicates that some States require registrants to appear in person periodically at local law enforcement agencies to verify their address (and for such purposes as photographing and fingerprinting). Some States assign caseworkers to verify periodically that registrants still reside at the registered address. These * * * procedures effectively verify registrants' location, and impress on registrants that they are under observation by the authorities, in addition to making law enforcement agencies aware of the presence and identity of registered sex offenders in their neighborhoods.'' H.R. Rep. No. 256, 105th Cong., 1st Sess. 17 (1997).

D. Penalties for Registration Violations

Subsection (d) provides that a person required to register under a state program established pursuant to the Act who knowingly fails to register and keep such registration current shall be subject to criminal penalties. Accordingly, states that wish to comply with the Act must have criminal provisions covering this situation.

The requirement of criminal penalties for registration violations under the Act applies both to a state's own offenders who are required to register and to persons convicted in other states who are required to register because they have moved into the state to reside.

The Act neither requires states to allow a defense for offenders who were unaware of their legal registration obligations nor precludes states from doing so. As a practical matter, states can ensure that offenders are aware of their obligations through consistent compliance with the Act's provisions for advising offenders of registration requirements at the time of release and obtaining a signed acknowledgment that this information has been provided.

As discussed in part V of these guidelines, the Act as amended by the CJSA includes provisions that are designed to promote the registration of federal and military offenders and of non-resident workers and students. The CJSA amendments did not apply the Act's mandatory requirement of criminal penalties under state law for registration violations to federal and military offenders who reside in the state or to non-resident workers and students. However, Congress recognized the desirability of fully incorporating such offenders into state registration programs by statute, *see* H.R. Rep. No. 256, 105th Cong., 1st Sess. 18 (1997), and the availability of substantial sanctions for registration violations by all types of sex offenders is important to realize the Act's objective of a comprehensive, nationwide sex offender registration system. Hence, states are strongly encouraged to provide criminal penalties for registration violations by all offenders within the scope of the Act, regardless of whether the registrant is present in the state as a resident, worker, or student, and regardless of whether registration is premised on a conviction under the law of a state or under federal or military law.

III. Release of Registration Information [September 12, 1997; Possible Two-Year Extension]

Subsection (e) of the Act governs the disclosure of information collected under state registration programs.

This part of the Act derives from the federal Megan's Law amendment to the Wetterling Act (Pub. L. No. 104–145, 110 Stat. 1345), which is subject to the same deadline for compliance as the original provisions of the Act under 42 U.S.C. 14071(g). Hence, the deadline for compliance is Sept. 12, 1997, or Sept. 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance.

Paragraph (1) of subsection (e) provides that information collected under a state registration program may be disclosed for any purpose permitted under the laws of the state. Hence, there is no requirements under the Act that registration information be treated as private or confidential to any greater extent than the state may wish.

Paragraph (2) of subsection (e) provides that the state or any agency authorized by the state shall release relevant information as necessary to protect the public. To comply with this requirement, a state must establish a conforming information release program that applies to offenders required to register on the basis of convictions occurring after the establishment of the program. States do not have to apply new information release standards to offenders whose convictions predate the establishment of a conforming program, but the Act does not preclude states from applying such standards retroactively to offenders convicted earlier if they so wish.

The principal objective of the information release requirement in paragraph (2) of subsection (e) is to ensure that registration programs will include means for members of the public to obtain information concerning registered offenders that is necessary for the protection of themselves or their families. Hence, a state cannot comply with the Act by releasing registration information only to law enforcement agencies, to other governmental or non-governmental agencies or organizations, to prospective employers, or to the victims of registrants' offenses. States also cannot comply by having purely permissive or discretionary authority for officials to release registration information. Information must be released to members of the public as necessary to protect the public from registered offenders. This disclosure requirement applies both in relation to offenders required to register because of

conviction for ''a criminal offense against a victim who is a minor'' and those required to register because of conviction for a ''sexually violent offense.''

States do, however, retain discretion to make judgments concerning the circumstances in which, and the extent to which, the disclosure of registration information to the public is necessary for public safety purposes and to specify standards and procedures for making these determinations. Several different approaches to this issue appear in existing state laws.

One type of approach, which is consistent with the requirements of the Act, involves particularized risk assessments of registered offenders, with differing degrees of information release based on the degree of risk. For example, some states classify registered offenders in this manner into risk levels, with registration information limited to law enforcement uses for offenders in the ''low-risk'' level; notice to organizations with a particular safety interest (such as schools and other child care entities) for ''medium risk'' offenders; and notice to neighbors for ''high risk'' offenders.

States also are free under the Act to make judgments concerning the degree of danger posed by different types of offenders and to provide information disclosure for all offenders (or only offenders) with certain characteristics or in certain offense categories. For example, states may decide to focus particularly on child molesters, in light of the vulnerability of the potential victim class, and on recidivists, in light of the threat posed by offenders who persistently commit sexual offenses.

Another approach by which states can comply with the Act is to make information accessible to members of the public on request. This may be done, for example, by making registration lists open for inspection by the public, or by establishing procedures to provide information concerning the registration status of identified individuals in response to requests by members of the public. As with proactive notification systems, states that have information-on-request systems may make judgments about which registered offenders or classes of registered offenders should be covered and what information will be disclosed concerning these offenders.

States are encouraged to involve victims and victim advocates in the development of their information release programs, and in the process for particularized risk assessments of registrants if the state program involves such assessments.

A proviso at the end of paragraph (2) of subsection (e) states that the identify of the victim of an offense that requires registration under the Act shall not be released. This proviso safeguards victim privacy by prohibiting disclosure of victim identity to the general public in the context of information release programs for registered offenders. It does not bar the dissemination of victim identity information for law enforcement or other governmental purposes (as opposed to disclosure to the public) and does not require that a state limit maintenance of or access to victim identity information in public records (such as police and court records) that exist independently of the registration system. Because the purpose of the proviso is to protect the privacy of victims, its restriction may be waived at the victim's option.

So long as the victim is not identified, the proviso in paragraph (2) does not bar including information concerning the characteristics of the victim and the nature and circumstances of the offense in information release programs for registered offenders. For example, states are not barred by the proviso from releasing such information as victim age and gender, a description of the offender's conduct, and the geographic area where the offense occurred. However, states are encouraged to avoid unnecessarily including information that may inadvertently result in the victim's identity becoming known, such as identifying a specific familial relationship between the offender and a victim who still lives in the area.

Concerns have been raised that the disclosure of registration information to the public under ''community notification'' programs may result in criminal acts or other reprisals against registrants. While currently available information does not indicate that this has been a significant problem under state programs, states are encouraged to consider including measures in their programs to minimize any possibility of misuse of the information released under the program. For example, some states include in their informational notices statements that the information is provided only for legitimate protective purposes, and that criminal acts against registrants will result in prosecution. As a further example, some states provide special training for officers responsible for community notification and/or hold community meetings in connection with the provision of notice to the community concerning a registrant's presence.

IV. Special Registration Requirements Under the Pam Lychner Act for Recidivists and Aggravated Offenders [October 2, 1999; Possible Two-Year Extension]

Subsection (b)(6)(B)(i)–(ii) of the Act requires lifetime registration for persons in two categories: (1) registrants who have a prior conviction for an offense for which registration is required by the Act, and (2) registrants who have been convicted of an ''aggravated offense.''

This requirement derives from an amendment to the Wetterling Act enacted by the Pam Lychner Act. The time for compliance is accordingly that provided in section 10(b) of the Pam Lychner Act—Oct 2, 1999, subject to a possible two-year extension for states making good faith efforts to come into compliance.

Subsection (b)(6)(B)(i) requires lifetime registration for certain recidivists. States can comply with this provision by requiring offenders to register for life where the following conditions are satisfied: (1) the current offense is one for which registrations is required by the Act—i.e., an offense in the range of offenses specified in subsection (a)(3)(A)-(B) or a comparable range of offenses, and (2) the offender has a prior conviction for an offense for which registration is required by the Act. There is no time limit under the Act on qualifying prior convictions. In determining whether a person has a qualifying prior conviction, states may rely on the methods they normally use in searching criminal records.

Subsection (b)(6)(B)(ii) requires lifetime registration for persons convicted of an ''aggravated offense,'' even on a first conviction. ''Aggravated offense'' refers to state offenses comparable to aggravated sexual abuse as defined in federal law (18 U.S.C. 2241), which principally encompasses: (1) engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence, and (2) engaging in sexual acts involving penetration with victims below the age of 12. Hence, states can comply with this provision by requiring lifetime registration for person convicted of the state offenses which cover such conduct.

A state is not in compliance with subsection (b)(6)(B) (i) or (ii) if it has a procedure or authorization for terminating the registration of convicted offenders within the scope of these provisions at any point in their lifetimes. However, if the underlying conviction is reversed, vacated, or set aside, or if the registrant is pardoned, registration (or continued registration) is

not required under the Act. Likewise, if the applicability of the lifetime registration requirement is premised on a prior conviction pursuant to subsection (b)(6)(B)(i), it becomes inapplicable if the prior conviction is reversed, vacated, or set aside, or if the registrant is pardoned for the prior conviction offense.

The proviso in subsection (b)(6) that registration need not be required ''during ensuing periods of incarceration'' applies to registrants subject to lifetime registration. Hence, states are not required to carry out address registration and verification procedures for such registrants during subsequent periods in which the registrant is imprisoned or civilly committed. To comply with the Act, a state that does waive registration for such registrants during subsequent criminal or civil confinement must require that registration resume when the registrant is released.

As with the other requirements of the Act, a state may impose the lifetime registration requirement for recidivists and aggravated offenders prospectively, so that it applies only to offenders required to register on the basis of convictions occurring after the state has adopted the requirement. Hence, it is sufficient for compliance with the Act if lifetime registration is imposed on: (1) all offenders convicted of an aggravated offense after the lifetime registration requirement is adopted; and (2) all recidivists convicted of an offense for which registration is required under the Act after the lifetime registration requirement is adopted (regardless of when the prior qualifying conviction occurred). Of course, states remain free to apply the lifetime registration requirement retroactively to offenders convicted prior to its adoption if they so wish.

V. Special Registration Requirements Under the CJSA Amendments Relating to Sexually Violent Predators, Federal and Military Offenders, and Non-resident Workers and Students [November 25, 2000; Possible Two-Year Extension]

Subsections (a)(2), (a)(3)(C)–(E), (b)(1)(B), (b)(3)(B), and (b)(6)(B)(iii) of the Act prescribe heightened registration requirements for persons who are determined to be ''sexually violent predators'' under specified procedures. These provisions also, however, allow the approval of alternative procedures and of alternative measures of comparable or greater effectiveness in protecting the public.

Subsection (b)(7) of the Act requires states, as provided in these guidelines, to ensure that procedures are in place to accept registration information from: (1) residents convicted of a federal offense or sentenced by a court martial, and (2) nonresident offenders who have crossed into another state in order to work or attend school.

Because these requirements, in their current form, derive from the CJSA, the time for compliance is that provided in section 115(c)(2) of the CJSA—Nov. 25, 2000, subject to a possible two-year extension for states making good faith efforts to come into compliance.

A. Heightened Sexually Violent Predator Registration or Alternative Measures

1. *Heightened sexually violent predator registration.* Subparagraphs (B)–(E) of subsection (a)(3) contain the Act's definition of ''sexually violent predator'' and related definitions. Subparagraph (C) defines ''sexually violent predator'' to mean a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses. Subparagraph (D) essentially defines ''mental abnormality'' to mean a condition involving a disposition to commit criminal sexual acts of such a degree that it makes the person a menace to others. The definition of ''personality disorder'' is a matter of state discretion since the Act includes no specification on this point. For example, a state may choose to utilize the definition of ''personality disorder'' that appears in the Diagnostic and Statistical Manual of Medical Disorders: DSM–IV. American Psychiatric Association, *Diagnostic and Statistical Manual of Medical Disorders* (4th ed. 1994). Subparagraph (E) defines ''predatory'' to mean an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

A state that wishes to comply with the Act's provisions concerning sexually violent predator registration must adopt some approach to deciding when a determination will be sought as to whether a particular offender is a sexually violent predator. However, the specifics are a matter of state discretion. For example, a state might commit the decision whether to seek classification of an offender as a sexually violent predator to the judgment of prosecutors, or might provide that a determination of this question should be undertaken routinely when a person is convicted of a sexually violent offense and has a prior history of committing such crimes. Similarly, the Act affords states discretion with regard to the timing of the determination whether an offender is a ''sexually violent predator.'' A state may, but need not, provide that a determination on this issue be made at the time of sentencing or as a part of the original sentence. It could, for example, be made instead when the offender has served a term of imprisonment and is about to be released from custody.

Subparagraphs (A) and (B) of subsection (a)(2) govern the procedures for making the sexually violent predator determination. Subparagraph (A) states that the determination is to be made by a court after considering the recommendation of a board composed of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies. However, subparagraph (B) allows the Attorney General to waive these requirements where a state has established alternative procedures or legal standards for designating a person as a sexually violent predator.

The waiver authority under subparagraph (B), which was added by the CJSA amendments, recognizes that a judicial determination informed by the recommendations of a board of mixed composition is not the only approach states may validly adopt to secure appropriate input and make fair determinations. For example, at a sentencing proceeding or other hearing to determine sexually violent predator status, a state might provide for input concerning psychological assessment through expert testimony; input from the law enforcement perspective through the prosecutor's presentation; and input from the perspective of victims through allocution or testimony by the victim(s) of the underlying sexually violent offense or offenses. Moreover, judicial determinations concerning sexually violent predator status are not the only legitimate approach since, for example, a state may decide to assign responsibility for such determinations to a parole board or other administrative agency with adjudicatory functions. Because there are many valid approaches that states may devise, the particular approach taken to determine whether an offender is a sexually violent predator as defined in the Act will be treated as a matter of state discretion under the Act.

For registrants who have been determined to be ''sexually violent predators'' under the Act's definitions,

the Act prescribes three special registration requirements:

First, subsection (b)(1)(B) provides that the initial registration information obtained from a sexually violent predator must include ''the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person.'' In determining whether offenders have received treatment, the officers responsible for obtaining the initial registration information may rely on information that is readily available to them, either from existing records or the offender, and may comply with the requirement to document an offender's treatment history simply by noting that the offender received treatment. If states want to require the inclusion of more detailed information about offenders' treatment history, however, they are free to do so.

Second, subsection (b)(3)(B) requires quarterly address verification for sexually violent predators, as opposed to the annual address verification required for registrants generally under subsection (b)(3)(A). Part II.C of these guidelines provides a general explanation of the Act's address verification requirement.

Third, subsection (b)(6)(B)(iii) requires lifetime registration for sexually violent predators. This requirement is unqualified. While language in subsection (a)(1)(B) of the Act alludes to possible termination of sexually violent predator status under subsection (b)(6)(B), this is a relic of earlier versions of the Act that has no referent in the Act's current text following the Pam Lychner Act and CJSA amendments.

Hence, for example, a state is not in compliance with the Act's requirements if it allows registration to be terminated for a person who has been found to be a sexually violent predator on the basis of a later determination that the person is no longer a sexually violent predator or has been rehabilitated. However, if the underlying conviction for a sexually violent offense is reversed, vacated, or set aside, or if the registrant is pardoned for that offense, registration (or continued registration) as a sexually violent predator is not required under the Act. Moreover, the proviso in subsection (b)(6) that registration need not be required ''during ensuing periods of incarceration'' applies to sexually violent predators. Hence, states are not required to carry out address registration and verification procedures when a sexually violent predator is subsequently imprisoned or civilly committed. To comply with the Act, a state that does waive registration for sexually violent predators during subsequent criminal or civil confinement must require that registration resume when the registrant is released.

2. *Alternative measures of comparable or greater effectiveness.* Subparagraph (C) of subsection (a)(2) authorizes the Attorney General to approve ''alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in this section regarding sexually violent predators.'' A state that wishes to have ''alternative measures'' approved under subparagraph (C) must make a request for such approval to the reviewing authority.

The authorization to approve alternative measures under subparagraph (C) was added by the CJSA, reflecting Congress's recognition that few states followed the Act's specific provisions concerning sexually violent predators; that it would be difficult for many states to do so; and that states can ''incorporate other features into their systems which further the objective of protecting the public from particularly dangerous sex offenders.'' H.R. Rep. No. 256, 105th Cong., 1st Sess. 15 (1997).

The legislative history of the CJSA identified a number of factors that would be pertinent to a determination whether a state has adopted alternative measures of comparable or greater effectiveness:

> For example, some State programs have registration periods for broadly defined categories of sex offenders which are much longer than the basic 10-year registration period under the Wetterling Act. This may provide more protection for the public than heightened registration requirements limited to a relatively small class of offenders who would be classified as sexually violent predators * * *. Moreover, some States require civil commitment, lifetime supervision, or very long periods of imprisonment for sexually violent predators or broader classes of serious sex offenders. [Subsection (a)(2)] makes it clear that alternative approaches like these can be approved if a State's approach is equally effective or more effective in protecting the public from particularly dangerous sex offenders.

H.R. Rep. No. 256, 105th Cong., 1st Sess. 15 (1997).

Hence, for example, the reviewing authority will approve a state system as providing alternative measures ''of comparable or greater effectiveness'' if the state applies the principal heightened registration requirements under the Act's sexually violent predator provisions—i.e., lifetime registration and quarterly address verification—to a class of offenders that is generally broader than ''sexually violent predators.'' Since ''sexually violent predators'' are, by definition, a subclass of persons convicted of a ''sexually violent offense,'' a state has obviously adopted an alternative measure of comparable or greater effectiveness if it requires lifetime registration and quarterly address verification uniformly for persons in the broader class of those convicted of a ''sexually violent offense''.

For states that follow other approaches, the determination whether ''alternative measures of comparable or greater effectiveness'' have been adopted will be made on a case-by-case basis.

B. Federal and Military Offenders; Non-resident Workers and Students

Subsection (b)(7) of the Act requires states, as provided in these guidelines, to ensure that procedures are in place to accept registration information from: (1) residents convicted of federal offenses or sentenced by courts martial, and (2) nonresident offenders who cross into other states in order to work or attend school.

This requirement was added to close two gaps in the Wetterling Act standards for registration programs. First, Congress was concerned about the lack of any provision for registration of persons convicted of federal sex offenses—such as those defined in chapters 109A, 110, and 117 of title 18, United States Code—and the lack of any provision for registration of persons convicted of sexual offenses under the Uniform Code of Military Justice while in the armed forces. Second, Congress was concerned about the commission of offenses by registered offenders at or near their places of work or study, where the local authorities are unaware of the offenders' presence in those areas because they reside in a different state. The new provisions relating to registration of federal and military offenders, and non-resident workers and students, were added to address these concerns.

1. *Federal and military offenders.* In relation to federal and military offenders, states can comply with the new requirement under subsection (b)(7) by accepting in their registration programs address information from such offenders who reside in the state, where the federal conviction or court martial

sentence was for a criminal offense against a victim who is a minor or a sexually violent offense (as defined in the Act).

Congress did not otherwise make the Act's mandatory standards for state registration programs applicable to federal and military offenders. Congress, however, did note that ''it would be preferable that States fully incorporate federal offenders [and] persons sentenced by courts martial * * * into their registration and notification programs by statute.'' H.R. Rep. No. 256, 105th Cong., 1st Sess. 18 (1997). As a practical matter, the presence in a state of a sex offender whose whereabouts are unknown to the authorities poses the same potential danger to the public, regardless of whether the offender was convicted in a state court for a state offense or for a comparable offense under federal or military law.

Hence, as a matter of sound policy, states are strongly encouraged to subject federal and military offenders to the full panoply of registration requirements and procedures established for state offenders, including reporting of subsequent changes of address following the initial registration, periodic address verification, criminal penalties for registration violations, and release of registration information as necessary for protection of the public. Some states currently put sex offenders convicted in federal or military courts on the same footing as state offenders under their registration programs; all states are encouraged to adopt this approach.

States should be aware that the CJSA enacted provisions that impose complementary obligations on federal authorities to facilitate state registration of federal and military offenders. Specifically, provisions in section 115(a)(8) of the CJSA require federal and military authorities to notify state and local law enforcement and registration agencies concerning the release or subsequent movement to their areas of federal and military sex offenders. In addition, under amendments in section 115(a)(8) of the CJSA, federal sex offenders are required to register in states where they reside, work, or attend school as mandatory conditions of probation, parole, and post-imprisonment supervised release. State and local officers accordingly are encouraged to notify federal authorities of any failure by such offenders to register, so that appropriate action can be taken with respect to their federal release status. States also should be aware that section 115 of the CJSA amended the federal failure-to-register offense (42 U.S.C. 14072(i)) in order to bring within its scope federal and military sex offenders who fail to register.

2. *Non-resident workers and students.* Subsection (b)(7)(B) of the Act requires states to accept registration information from non-residents who have come into the state to work or attend school. Related provisions appear in subsections (a)(3)(F)–(G) and (c). As specified in these provisions, the workers from whom registration information must be accepted include those who have any sort of full-time or part-time employment in the state, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year. The students from whom registration information must be accepted include those who are enrolled in any type of school in the state on a full-time or part-time basis.

The Act's provisions regarding non-resident workers and students sometimes refer to persons who cross into another state ''in order to work or attend school'' and sometimes refer to persons who are or may be in another state where the person ''is employed,'' ''carries on a vocation,'' or ''is a student.'' These are merely terminological variations; the Act's various references to non-resident workers and students all refer to the same classes of persons, as defined above.

States can comply with the Act's requirement to accept registration information from non-resident workers and students by accepting registration information from such persons, where the person would be required to register in his state of residence under the Act's standards. The ''registration information'' the state must accept from such a registrant to comply with the Act is, at a minimum, information concerning the registrant's place of employment or the school attended in the state and his address in his state of residence. States are free to accept or require more extensive information if they wish, such as information concerning any place of lodging the registrant may have in the state for purposes of work or school attendance.

Congress did not otherwise make the Act's mandatory standards for state registration programs applicable to non-resident workers and students, but did note that ''it would be preferable that States fully incorporate * * * offenders crossing State borders to work or go to school * * * into their registration and notification programs by statute.'' H.R. Rep. No. 256, 105th Cong., 1st Sess. 18 (1997). States are encouraged to include measures in their registration systems that will ensure effective registration of non-resident workers and students, including provision of criminal penalties under state law for such offenders who fail to register and release of registration information concerning such offenders as necessary for public safety. States also should be aware that section 115 of the CJSA amended the federal failure-to-register offense (42 U.S.C. 14072(i)) in order to bring within its scope non-resident workers and students who fail to register.

In addition to requiring states to accept registration information from non-resident workers and students, the CJSA amendments added, as part of subsection (b)(1)(A)(iii), a requirement to inform a registrant in the initial registration process that he must register in a state where he is employed, carries on a vocation, or is a student. As discussed in Part II.A of these guidelines, subsection (b)(1)(A) of the Act has always required that offenders be informed of the general duty to register, of the duty to report subsequent changes of address, and of the duty to register in any state of residence. States can readily supplement their procedures for informing offenders of registration obligations to include the information that the offender also must register in any state where he is employed, carries on a vocation, or is a student.

VI. Participation in the National Sex Offender Registry [November 25, 2000; Possible Two-Year Extension]

Subsequent (b)(2)(B) of the Act requires states to ''participate in the national database established under section 14072(b)''—i.e., the National Sex Offender Registry (NSOR)—''in accordance with guidelines issued by the Attorney General, including transmission of current address information and other information on registrants to the extent provided by the guidelines.''

This requirement derives from the amendment of the Wetterling Act by section 115(a)(2)(B) of CJSA. The time for compliance is accordingly that provided in section 115(c)(2) of CJSA—Nov. 25, 2000, subject to a possible two-year extension for states making good faith efforts to come into compliance. At the present time, many states are already participating in NSOR, and the remainder are strongly encouraged to do so as promptly as possible.

States should be aware that participation in NSOR is a condition for determining that a state has a ''minimally sufficient'' sex offender

registration program as defined in 42 U.S.C. 14072(a)(3). Pursuant to section 115(a)(7) of the CJSA, states have until October 2, 1999, to establish ''minimally sufficient'' programs (subject to a possible two-year extension for states making good faith efforts). In states that have not established ''minimally sufficient'' programs by that time, the FBI will be required to directly register sex offenders convicted in the state, and there will be correlative responsibilities on such states to facilitate FBI registration of their sex offenders as provided in 42 U.S.C. 14072(h)(1) and (k). Hence, the failure of a state to participate in NSOR by October 2, 1999, may result in otherwise avoidable federal intervention in sex offender registration in the state.

States should also be aware that under the National Sex Offender Registry Assistance Program (NSOR–AP), funding is available from the Bureau of Justice Statistics of the United States Department of Justice to facilitate state participation in NSOR and upgrade state sex offender registries. States desiring additional information concerning this funding program should contact the Bureau of Justice Statistics.

In accordance with 42 U.S.C. 14072(b), the FBI has established an interim version of NSOR (the ''Interim Registry'') to track the whereabouts and movement of persons required to register under sex offender registration programs. The Interim Registry functions as a ''pointer'' system, indicating on an individual's FBI Identification Record the fact that the individual is a registered sex offender and the name and location of the state agency that maintains the offender's registration information.

The FBI will be issuing regulations concerning state participation in NSOR. To participate in NSOR under current procedures, states must submit the following information on registrants to the FBI: the name under which the person is registered; the registering agency's name and location; the date of registration; and the date registration expires. Upon the submission of this information, a notice indicating that an individual is a registered sex offender and listing the information will be included on the individual's FBI Identification Record.

The FBI is in the process of modifying the National Crime Information Center (NCIC) to establish a new crime information system that will be known as ''NCIC 2000.'' NCIC 2000, which is expected to go on-line in mid-1999, will include a Convicted Sexual Offender Registry File that will serve as the permanent National Sex Offender Registry (the ''Permanent Registry''). In the Permanent Registry, sex offender registration information will be entered directly into the NCIC Convicted Sexual Offender Registry File, via the NCIC communication circuit, and will include such information as the offender's name and address and details regarding the conviction resulting in registration. States will receive further guidance concerning participation in the Permanent Registry through future modifications of regulations and guidelines.

VII. Good Faith Immunity [Available to States Immediately]

Subsection (f) states that law enforcement agencies, employees of law enforcement agencies, independent contractors acting at the direction of such agencies, and state officials shall be immune from liability for good faith conduct under the Act. Inclusion of this provision in the Act was necessary to protect state actors and contractors involved in registration and notification programs from unwarranted exposure to liability, since the states cannot legislate immunities to liability under federal causes of action. This part of the Act does not impose any requirement on states and the character of state law provisions regarding the scope of immunity or liability will not be considered in the compliance review under the Act.

VIII. Compliance Review; Consequences of Non-Compliance

The time states have to comply with the Act's requirements depends on the legislation from which the requirements derive, as specified in these guidelines. Thus, the initial deadline for complying with requirements derived from the Wetterling Act as originally enacted or from Megan's Law was September 12, 1997, and the deadline is now September 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance. Requirements deriving from the Pam Lychner Act must be complied with by October 2, 1999, subject to a possible two-year extension for states making good faith efforts to comply. Requirements deriving from the CJSA must be complied with by November 25, 2000, subject to a possible two-year extension for states making good faith efforts to comply.

These deadlines set outer limits for state compliance to avoid a reduction of Byrne Formula Grant funding. States are strongly encouraged to attempt to achieve compliance with all parts of the Act as quickly as possible to maximize the benefits of the Act's reforms.

States that fail to come into compliance within the specified time periods will be subject to a mandatory 10% reduction of Byrne Formula Grant funding, and any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance. If a state's funding has been reduced because it has failed to comply with the Act's requirements by an applicable deadline, the state may regain eligibility for full funding in later program years by establishing compliance with all applicable requirements of the Act in such later years.

States are encouraged to submit information concerning existing and proposed sex offender registration provisions to the Bureau of Justice Assistance with as much lead-time as possible. This will enable the reviewing authority to assess the status of state compliance with the Act and to suggest any necessary changes to achieve compliance before the funding reduction goes into effect. At the latest, state submissions must be provided on the following timetable:

To maintain eligibility for full Byrne Formula Grant funding following September 12, 1999—the end of the implementation period for the Act's original requirements and Megan's Law, for states that have received the two-year ''good faith'' extension—such states must submit to the Bureau of Justice Assistance by July 12, 1999, information that shows compliance, in the reviewing authority's judgment, with the requirements described in parts I, II, and III of these guidelines.

To maintain eligibility for full Byrne Formula Grant funding following October 2, 1999—the end of the implementation period for the Pam Lychner Act requirements, absent an extension—states must submit to the Bureau of Justice Assistance by July 12, 1999, information that shows compliance, in the reviewing authority's judgment, with the requirements described in part IV of these guidelines, or a written explanation of why compliance cannot be achieved within that period and a description of the good faith efforts that justify an extension of time (but not more than two years) for achieving compliance.

To maintain eligibility for full Byrne Grant funding following November 25, 2000—the end of the implementation period for the CJSA requirements, absent an extension—states must submit to the Bureau of Justice Assistance by September 25, 2000, information that

shows compliance, in the reviewing authority's judgment, with the requirements described in parts V and VI of these guidelines, or a written explanation of why compliance cannot be achieved within that period and a description of the good faith efforts that justify an extension of time (but not more than two years) for achieving compliance.

After the reviewing authority has determined that a state is in compliance with the Act,the state will be required as part of the Byrne Formula Grant application process in subsequent program years to certify that the state remains in compliance with the Act.

Dated: December 10, 1998.

Janet Reno,

Attorney General.

Editorial Note: Due to typesetting errors, notice document FR Doc. 98-33377, originally published in the issue of Thursday, December 17, 1998, at pages 69652-69667 is being republished in its entirety.

[FR Doc. 98–33377 Filed 12–16–98; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday
January 5, 1999

Part III

National Indian Gaming Commission

25 CFR Part 542

Minimum Internal Control Standards; Final Rule

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 542

RIN 3141–AA11

Minimum Internal Control Standards

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: Tribal casino operations are subject to risk of loss because of customer or employee access to cash and cash equivalents within a casino. The National Indian Gaming Commission (Commission) developed this rule to establish Minimum Internal Control Standards (MICS) to reduce that risk. This rule, among other things, contains standards and procedures that govern cash handling, documentation, game integrity, auditing, surveillance and exceptions.

DATES: Effective Date: February 4, 1999.

Compliance Date: Tribal MICS must be developed by April 5, 1999.

Gaming operations operating on or before March 31, 1999, must be in full compliance no later than August 3, 1999. Gaming operations which commence operation after March 31, 1999, must be in full compliance prior to commencement of operations.

FOR FURTHER INFORMATION CONTACT: Mai Dinh, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, D.C. 20005. Telephone: 202–632–7003.

SUPPLEMENTAL INFORMATION:

Introduction

As the Commission continues to perform its oversight responsibilities for an expanded Indian gaming industry, it has perceived that the industry has in many respects matured, and has become considerably more diverse and complex than at the time the Commission was created in 1988.

The vitality of the industry, and the confidence the gaming public placed in the integrity of play of the gaming offered is manifest by the growing patronage at tribal gaming facilities. The economic benefits brought to tribes by gaming is evidenced by the reduction, and in some cases elimination, of tribal unemployment on many reservations.

Effective control of all gaming revenues and gaming resources is essential to their success, and to this end all gaming operations establish internal controls which specify and require procedures whereby there is monitoring, documentation and accounting of all of the gaming operations' activities.

Gauging the sufficiency of the internal controls over the play of the games and the handling and accounting of the receipts and proceeds from the gaming at each tribal gaming operation has become increasingly challenging, as the diversity and complexity of the industry have increased. Gaming, by its nature, is a cash-intensive business, often involving large amounts of coins and currency. Preventing collusion, witnessing and documenting transactions and revenue flows, limiting access, controlling inventories, and auditing these activities are among tasks essential to provide adequate oversight of gaming activities.

A need for a minimum level of control, to apply universally throughout the industry, was recognized by those within and without the Indian gaming community. The National Indian Gaming Association (NIGA) and the National Congress of American Indians (NCAI) created a task force, staffed by veteran tribal gaming attorneys, regulators, managers and auditors, to draft model internal control standards for tribal gaming operations. This effort was stimulated in part by legislative proposals which would have created a process whereby a federal regulatory body would review and adopt minimum internal control standards formulated and proposed by a tribal advisory group, which standards would then have applied to all tribal gaming operations.

Taking its lead from these proposals and the efforts of the Indian gaming industry, the Commission examined the extent of its authority in this regard. The Commission wanted clearer objective standards by which it could require and measure the adequacy with which each gaming operation monitored and controlled the fairness of play of the gaming activities and the handling of the cash and proceeds produced by that activity. The Commission concluded that in furtherance of its role in providing regulation of tribal gaming adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribes are the primary beneficiaries of the gaming operations, and to assure that gaming is conducted fairly and honestly by both the operators and players, the formulation and promulgation of minimum internal control standards governing tribal gaming were necessary and appropriate.

General Comments

Commenters disagreed as to whether the Commission has the statutory authority to promulgate regulations on MICS. The Commission believes that it does have the authority to promulgate this final rule. In 25 U.S.C. 2702, Congress declared that a purpose of IGRA is to shield Indian gaming from corrupting influences, to ensure that the tribes are the primary beneficiaries of the gaming and to assure that Indian gaming is fair and honest. That section also declares that the Commission was established to meet Congressional concerns about Indian gaming and to protect gaming as a means of generating tribal revenue. It has been argued that this section is general, conferring no substantive authority. In fact, it is reasonable to view this section as substantive authority for the promulgation of MICS, because those MICS provide the Commission with such a significant tool for achieving the stated purpose of IGRA.

A commenter suggested that the Commission's authority to promulgate MICS also derives from the gaming ordinance requirements of 25 U.S.C. 2710. The Commission agrees. The Chairman must approve tribal gaming ordinances for class II and class III gaming if those ordinances provide, *inter alia:* that net revenues from tribal gaming will be used only for specified purposes and that annual outside audits will be conducted and provided to the Commission. By giving the Commission a role in approving these provisions, Congress expressed its expectation that the Commission would bear some responsibility for ensuring that procedures adopted by the tribes would adequately protect the integrity of the revenue stream which underlies the audits and revenue allocation plans. Promulgation of MICS, for use by the tribes, is an appropriate mechanism for the Commission to use in carrying out its duties in this regard.

Congress granted to the Commission broad authority and responsibility to exercise regulatory oversight over Indian gaming. Several IGRA provisions are concerned with the integrity of a gaming operation's handling of assets. These provisions include the annual audit requirements of 25 U.S.C. 2710(b)(2)(C), the fee assessments under 25 U.S.C. 2717, and self-regulation under 25 CFR 2710(c). Internal control standards are the mechanisms accepted by the industry to assure that integrity. Accordingly, the Commission's promulgation of MICS is consistent with its responsibilities as the federal regulator of Indian gaming.

Several commenters suggested that the Commission develop separate MICS for Class II and Class III gaming. The Commission disagrees with this suggestion. These MICS are not written to address the classification of any particular game. Rather, these MICS are

concerned with the control issues present in each type of game. Attempting to promulgate separate MICS may lead to confusion. One commenter suggested that the Commission promulgate regulations to classify games into Class II or Class III. The Commission is considering such regulations.

Several commenters requested that the Commission make clear that the promulgation of this rule does not confer upon the states jurisdiction over class II gaming or any power or authority over class III gaming that is not already provided for in the Tribal-State compacts. The Commission agrees. These regulations should not be interpreted to mean that the states assume any authority or responsibility under these regulations. Section 542.4 has been modified to eliminate any confusion in this area.

A few commenters asked the Commission to state clearly the enforcement mechanism and process for this rule. The Commission intends to work with the tribes and the gaming operations to attain compliance with these regulations through training and technical assistance. The Commission anticipates that most, if not all, tribes will be able to achieve compliance in the time provided. In those instances where a particular tribe or gaming operation is in substantial noncompliance and the Commission believes it necessary to bring an enforcement action, the Commission will follow the process provided for in 25 CFR Parts 573, 575 and 577.

Several commenters stated that the cost of implementing various standards in the MICS will be high. The Commission acknowledges that some operations will have to purchase equipment and hire additional personnel. The Commission, however, believes that the benefit outweighs the cost of better security for the gaming operations and their patrons and an increased level of control.

Several commenters made several suggestions that would modify the proposed rule to resemble their MICS or internal control system. While the Commission recognizes that tribes have invested much effort and time in developing their MICS and internal control systems, each gaming operation is unique and what is effective for one may not be effective for another. The Commission believes this final rule allows for the widest applicability under the circumstances.

Several commenters stated that they use a computerized system for certain aspects of their internal control system rather than the manual system set forth in the proposed rule. The Commission recognizes that computerized systems are used in many internal control systems. Sections 542.5 to 542.13 permit the use of computerized systems if they provide at least the same degree of control as the manual system, and the tribes have approved the use of the system.

Several commenters argue that fewer people are needed to perform certain functions (i.e., drop count or required signatures) than the number mandated by the proposed rule. The commenters also suggested that certain procedures such as audits be performed less frequently than the proposed rule required. The Commission believes that the number of people required for the various procedures and the frequency specified for in some procedures are essential to maintain the necessary degree of control. These requirements are generally the same as those adopted by Nevada and the National Indian Gaming Association.

Several commenters noticed that the number of years that gaming operations are required to retain various documents varied throughout the proposed rule and questioned why there were differing requirements. Other commenters disagreed with the need to retain documents for as long as the MICS mandate. Gaming operations are currently required to retain all financial documents for five years pursuant to 25 CFR 571.7(2)(c). Thus, the MICS have been modified to adopt a standard five-year retention period for all documents, reports and statements required to be retained.

Several commenters suggested that the Commission develop accounting standards or suggested specific accounting standards. The Commission has decided not to promulgate accounting standards at this time. The Commission, however, will consider developing accounting standards in the near future.

A few commenters suggested that the Commission develop standards for currency transactions. The United States Department of Treasury is the governmental agency with the authority to promulgate regulations governing currency transaction reporting. Tribes are required to develop standards that comply with the Department of Treasury's regulations, 31 CFR Part 103.

The Commission received many comments which noted typographical or grammatical errors or suggested minor changes to clarify a sentence. Other comments also noted duplicate standards. The Commission made the necessary changes and deletions.

A few commenters suggested that the Commission change the format or the organization of this rule. The Commission drafted this rule in accordance with the guidelines established by the **Federal Register**.

The citations in this section of the preamble are from the proposed rule. In a few instances the citations have been changed in the final rule.

Section 542.2 Definitions

Several commenters suggested changes to some definitions as well as additions and deletions to § 542.2. The Commission carefully reviewed these comments and agreed with many of them and revised this section accordingly.

The following definitions have been modified: ''Bank or bankroll''; ''Drop in table games''; ''Earned and unearned take''; ''gaming machine pay table''; ''Hard drop summary report''; ''Internal audit''; ''Lammer button''; ''Marker transfer form''; ''Master game report sheet''; ''Progressive jackpots''; ''Proposition players''; ''Wide area progressive gaming machine'': and ''Write.''

The definitions for ''Bingo master card record'' and ''Post time in horse racing'' have been deleted. The definitions for ''Gross gaming revenue''; ''MICS''; and ''Post time in parimutuel racing'' have been added.

The following definitions have been moved from section 542.12(v)(1) to this sections: ''Bank number''; ''Terminal number''; ''PIN''; ''Machine payout form''; ''Adjustment form''; and ''Game server.''

Section 542.3 Compliance

Several commenters believed that the time for tribes and gaming operations to come into compliance is too short and suggested that the Commission extend the time for compliance. While the Commission believes that the stated period is adequate for most tribes and gaming operations, the Commission understands that some tribes and gaming operations may need more time. Therefore, the Commission has modified 542.3(a) to permit tribes to seek a six-month extension from the Commission for their gaming operations to achieve compliance.

A commenter sought clarification of when new operations must be in compliance with these regulations. The Commission has added a new paragraph to address when gaming operations which open after the effective date of this rule must achieve compliance. Gaming operations which are operating on or before March 31, 1999, must be in compliance within the time

requirements of this section. Gaming operations which open after March 31, 1999, must be in full compliance with these regulations prior to commencing operations.

Several commenters questioned the need for or the process involved in the evaluation requirement of 542.3(d). This evaluation by an independent certified public accountant is necessary to ensure that a gaming operation's internal control system has been properly implemented and is in compliance with tribal MICS. The report to the Commission is essential to the Commission's ability to fulfill its oversight responsibilities. This standard does not preclude the tribe from requiring that a copy of the report be sent to it or its tribal gaming commission in its tribal MICS. The Commission does not mandate the form of the report. However, the American Institue of Certified Public Accountants has issued professional literature which directs the accounting profession on the reporting formats to be used in conducting these tests. The Commission believes that a management letter would be an inappropriate report for communicating the results of such testing.

This evaluation may and should be completed within the annual audit of the gaming operation. This standard does not require a separate audit of the gaming operation's internal control system. This requirement is similar to that of other gaming jurisdictions. The Commission intends to issue guidelines in the near future concerning this evaluation process.

Section 542.4 Tribal-State Compacts

Some commenters wrote that this section was confusing and sought clarification. One commenter agreed with this section but suggested that the Commission give examples of when there is a direct conflict and when one standard is more stringent than another. This section addresses situations where a standard in these regulations differs from a standard in a Tribal-State compact. A direct conflict occurs when complying with a standard in this rule would result in noncompliance with a Tribal-State compact standard or vice versa. An example would be where the NIGC standard requires the use of different color paper and the Tribal-State compact requires the use of the same color paper. In this situation, the tribal MICS should require the use of same color paper because 542.4(b) dictates that the Tribal-State compact standard would prevail.

When a standard in this rule is more stringent than a comparable Tribal-State compact standard, the tribal MICS should adopt the standard in this rule. Conversely, if a Tribal-State compact standard is more stringent than a comparable standard in this rule, the tribal MICS should adopt the Tribal-State compact standard. A standard is more stringent when it requires a higher degree of control. A gaming operation that complies with the more stringent standard would also be in compliance with the less stringent but comparable standard. An example of a standard being more stringent than another is when one standard requires that three persons be present for a procedure such as a soft count and the comparable standard requires only two persons be present for the same procedure. In this situation, the tribal MICS should require at least three persons be present for the procedure.

Section 542.5 Bingo

One commenter stated that bingo does not have shifts. Some gaming operations with bingo do operate by shift. However, the Commission modified 542.5(a)(2)(ii) to reflect the applicability of shifts.

One commenter believed that the bingo card inventory requirements of 542.5(d)(4) are too detailed. Given the nature and scope of bingo gaming operations, the Commission believes that detailed MICS are necessary. The Commission notes that these MICS are nearly identical to the latest version of the NIGA MICS.

Section 542.6 Pull Tabs

A commenter sought clarification as to whether 542.6(d)(1) requires a person outside the bingo department. This depends on how the gaming operation is organized. This standard requires that the employee or employees who are responsible for the pull-tab inventories cannot be involved in the sale of pull-tabs but the employees can be in the same department.

Section 542.7 Card Games

Several commenters argued that plastic cards should be permitted to remain in use for longer than seven days. The Commission agrees and a new standard has been added to permit plastic cards to remain in play for up to three months.

The Commission received several comments which suggested that 542.7(f) be modified to permit a gaming operation to withhold a commission or administrative fee. The Commission disagrees. Promotional pools, as opposed to player pools, are used to encourage the play of the game and should not be subject to an administrative fee.

Another commenter suggested that this section should specifically address controls for fees that the player's pay to the house for the right to play at the non-banked tables. The Commission does not believe that there needs to be an additional standard. These fees should be controlled in a manner similar to other cash handling procedures.

A commenter asked whether it is permissible to withhold a percentage of the amounts contributed to the pool, which would be used to seed the progressive pot after the jackpot has been hit. This would be permissible under these regulations.

A commenter suggested modifying 542.7(f)(2) to require that the rules be conspicuously posted but not required to be able to be read from each table. The Commission agrees and has made the suggested modification.

Section 542.8 Manual Keno

A commenter suggested that this section be deleted because no tribal gaming operation offers this game. The Commission disagrees. The Commission believes that some tribal casinos may be playing manual keno.

A commenter sought clarification as to whether equipment maintenance employees are independent of keno personnel. Employees who are responsible for the maintenance of keno equipment must be independent of employees who operate the game. This section has been modified to clarify this issue.

A commenter suggested that 542.8(b)(1)(ii) and (b)(2) seem to be in conflict as to a one person game. The Commission does not believe there is a conflict. A keno game may be operated by only one person if the total annual write does not exceed $500,000. Verification is separate from operation of the game. A gaming operation must have a second person to verify and regrade winning tickets if payouts exceed $100.00.

Section 542.9 Computerized Keno

A commenter suggested that 542.9(d)(5) be modified so that review of videotapes is optional. The Commission disagrees. Because this standard concerns the review of past games to verify the winning of a large amount of money, the gaming operation must be able to review the videotape or film of the rabbit ears live. Review of the rabbit ears prior to the start of the game would not assist in the verification process.

A commenter suggested that the dollar threshold in 542.8(h)(6) be raised

to $50. Both Nevada and NIGA's MICS establish the threshold at $25.00. The Commission sees no reason to raise that threshold.

Section 542.10 Parimutuel Wagering

A commenter suggested the Commission defer to Tribal-State compacts and state racing commissions in this area of gaming and delete this section. The Commission disagrees. The Commission believes that the MICS should address all areas of gaming encompassed in Indian gaming. Also, parimutuel wagering occurs across state lines but state commissions' jurisdiction is limited to their individual states. Therefore, these MICS are necessary to protect the integrity of the whole system. If there are any conflicts between these regulations and a Tribal-State compact, then the Tribal-State compact will prevail pursuant to 542.4.

A commenter suggested that the phrase ''the alpha need not be used if the numeric series is not used during the business year'' be added to 542.10(a)(4)(i) and (b)(5). The Commission agrees and has modified this standard accordingly.

A commenter questioned the difference between refunds and voided tickets in 542.10(e)(3)(vii). The difference is dependent on the type and nature of the system in use.

A commenter asked whether 542.10(f)(5) requires an audit of all track commissions. This standard does not require an audit of all track commissions. This standard requires a gaming operation to audit only one track or event a day.

Section 542.11 Table Games

A commenter suggested that this section should prohibit the practices of rim credit and call bets in tribal casinos. Another commenter suggested that the Commission should prohibit the acceptance of foreign currency in the pit. The Commission believes that each tribe should decide for itself whether it wishes to permit such practices depending on their own individual circumstances. Therefore, the Commission does not intend to prohibit these practices.

A commenter suggested the Commission include a standard for counter checks in 542.11(b)(2). The issuance of counter checks is addressed in § 542.13, Cage and Credit. The Commission believes that counter checks should not be issued at the table games but does not prohibit this practice.

A commenter suggested that 542.11(b)(4) be revised to require the use of a computer system when issuing credit. The Commission will not mandate the use of computers in this instance but recognizes that computers do provide a level of control and encourages gaming operations to use them when appropriate.

A commenter suggested that the dealer should not perform the procedure in 542.11(b)(12). The Commission disagrees. Both NIGA and Nevada's MICS require that lammer buttons are removed by the dealer, and the Commission sees no reason to modify the standard.

A commenter suggested that 542.11(b)(24) require that markers be transferred via pneumatic tube or hand carried by a representative from the security department. The Commission will not mandate the method by which markers are transported to the cashier's cage other than that they be transported by an employee who is independent of the marker issuance and payment functions.

A commenter suggested that checking a box on the fill and credit slip to distinguish the two should be adequate under 542.11(g)(6). The Commission disagrees. The reason why this standard mandates different color paper is that it enables people such as surveillance personnel to clearly distinguish between a fill and a credit which cannot be readily distinguished by checking a box.

A commenter suggested that 542.11(g)(8) and (g)(18) define the runner as independent of the cage or pit because the runner is not independent of the transaction since they sign the fill/credit attesting to the accuracy of the moneys carried. The Commission agrees and has modified the standards accordingly.

A commenter suggested that the Commission add a standard for ''pit banks.'' The Commission is not prepared to establish MICS for ''pit banks'' at this time.

A commenter suggested that 542.11(g)(12) be modified to require one copy of the fill slip to be deposited in the drop box. The Commission agrees and has modified the standard accordingly.

A commenter suggested a different standard when orders for credit are performed within a computerized system. The Commission agrees and has modified 542.11(g)(13) accordingly.

A commenter questioned the need to count a table's inventory at the end of the gaming day, as required in 542.11(h)(i), if there is knowledge that the table will not open the next day. The Commission believes that it is necessary to count the table's inventory at the end of each shift to maintain a necessary degree of control.

A commenter suggested that a cart for transporting drop boxes may not be needed for gaming operations with few tables. The Commission agrees and has modified the 542.11(h)(7)(iii) accordingly.

A commenter suggested that 542.11(h)(8) should require that all tables have a drop box unless the chips are removed making the table inoperable. All tables are required to have drop boxes regardless of whether the chips have been removed. However, drop boxes do not necessarily need to be changed for tables not in use during a shift.

A commenter suggested that the requirement in 542.11(i)(4) be changed to five days. The Commission disagrees. Four days are necessary to maintain the necessary degree of control.

A commenter stated that 542.11(i)(10) should require that the count team have only one copy of fill/credit slips available to them, and this procedure should be performed by the accounting department. The Commission agrees and has deleted this standard.

Section 542.12 Gaming Machines

A commenter believes that treating all par changes as a new machine may cause statistical and accounting havoc in some game operations and may create some conflicts. The Commission believes that it is necessary to require the gaming statistical report to reflect revised theoretical hold percentages as stated and compliance with the standards should not create a conflict.

A commenter wrote that while the controls for wide area progressives are legally required for tribal casinos, the actual procedures and compliance are the responsibility of the vendor, not the casino. As the commenter agreed, these controls are the responsibility of the casino and therefore, the Commission concludes that the casino should be responsible for ensuring that the vendor is in compliance.

A commenter suggested that 542.12(d)(6) should make clear that the Commission's access to casino documents does not create a basis for third parties to claim a right of access to casino documents. The Commission does not believe it necessary to address this issue in these regulations. The tribes may address this issue in their tribal MICS.

A commenter suggested that 542.12(e)(4) should be revised to require that all variances be noted on the weigh/count and wrap reports, but to require an immediate investigation only if the variance exceeds a set figure. The Commission agrees and the standard has been changed.

Several commenters noted that while 542.12(e)(7) required independent testing of the weigh scale quarterly, 542.12(e)(13) required the testing to be done monthly. The Commission has eliminated 542.12(e)(13). The test should be done quarterly.

A commenter suggested that 542.12(e)(8) be modified to permit the testing of the weigh scale immediately before the weigh commences. The Commission disagrees because it believes it is necessary to perform this procedure during the gaming machine count.

A commenter suggested that 542.12(e)(12) be deleted because it is cumbersome and serves no purpose. The Commission agrees and the standard has been deleted.

A commenter suggested that 542.12(f) be modified to require that after count/wrap reconciliation by the identified persons, the revenue amount is posted to the cage/vault accountability. The commission agrees and the standard has been added.

A commenter stated that the language in 542.12(f)(6) is in conflict with that in 542.12(f)(7) and is unnecessary with the exception of the requirement that the weigh tape be signed. The Commission does not agree that the language in the standards is in conflict. The standards are based on comparable standards widely used in industry MICS.

A commenter suggested that the Commission prohibit transfers out of the count room during the count and wrap process in 542.12(f)(14). While prohibiting these transfers would result in tighter control, the Commission does not intend to prohibit them. However, this does not preclude tribes from prohibiting these transfers in their tribal MICS. Another commenter stated that requiring a form for transfers during the count that is different from the form used for other transfers will not enhance controls. The Commission does not agree. The standard included in the MICS is based on a similar standard in the MICS of other jurisdictions.

A commenter stated that it should be the count team's, not the cashier's, responsibility to reconcile the wrap to the weigh/count in 542.12(f)(17)(iv). The Commission disagrees. This requirement is to ensure the necessary degree of control.

A commenter suggested that 542.12(f)(17)(vii) should be revised to require that all variances be noted on the weigh/count and wrap reports, but to require an immediate investigation only if the variance exceeds a set figure. The Commission agrees and has modified section 542.12(e)(4) and has eliminated 542.12(f)(17(vii) from the MICS.

A commenter suggested that 542.12(f)(28) require that the coin-in, coin-out, drop, and jackpot meter readings be recorded. Also, the commenter suggested that the meters should be required to be read each drop period, rather than monthly or weekly, to assure the highest level of integrity in the machines. While more frequent meter readings would result in a higher degree of control, the Commission is not prepared to impose a stricter requirement. However, this does not preclude the tribes from doing so in their tribal MICS.

A commenter noted that 542.12(g)(6) does not state what constitutes an appropriate rotation and suggested that the Commission adopt language similar to that in 542.11(i)(4). The Commission agrees and the standard has been modified to include a specific rotation requirement.

A commenter believes that the procedures in 542.12(i)(2) and (3) are only necessary if the gaming machine is not performing within the manufacturer's stated par range over the course of one year's operation. The Commission disagrees. These standards were developed based on a review of similar standards commonly used in the industry.

A commenter suggested that the Commission mandate a specific percentage of gaming machines to be tested in 542.12(k)(1) rather than requiring an unspecified ''sample.'' The Commission believes that the tribes should mandate the specific sample size to meet the needs of their individual gaming operations. The sample size should be large enough to obtain an accurate representation.

The Commission received several comments suggesting changes to 542.12(k)(2). Others found this standard confusing when read with 542.12(k)(3). The Commission evaluated 542.12(k)(2) and found that it may be confusing and unnecessary and has deleted it.

A commenter suggested that the reports required in 542.12(l)(14) and 542.12(l)(17) could be integrated into one report. The commenter also suggested that additional reports should be required, such as a comparison of metered drop to actual drop and a comparison of metered jackpots to actual jackpots. The Commission believes that if the requirements of standards 542.12(l)(14) and (17) are met then the information required could be accumulated in one or two reports, although the standards call for different information requirements as to individual machines versus machine group denomination information. The MICS do not mandate the additional reports mentioned; however, the standards do not preclude an operation from performing the procedures mentioned.

A commenter suggested that 542.12(l)(17) appears to be strictly a mathematical calculation without value. The Commission disagrees and believes the standard should be implemented as written. The standard is based on similar standards found in MICS from other jurisdictions.

A commenter asked whether security needs to be present when the gaming machine department accesses the drop in 542.12(n)(3). This standard does not specifically address the presence of security. It does not, however, preclude the tribe or gaming operation from requiring the presence of security during this procedure.

A commenter stated that the procedure in 542.12(o)(3) may be impossible to implement. The Commission disagrees. The standard is based upon currently used industry standards.

A commenter suggested that a new standard be added to 542.12(o)(10) to identify the ordering and acceptance of keys and to require their transport to secured storage in a manner that provides for verification of their integrity. The Commission does not agree as the MICS are not designed to provide for this level of specificity in this area.

A commenter suggested that the comparison in 542.12(r)(7) should be done on a per drop basis. The Commission believes that the standard requiring a weekly comparison of the bill-in meter reading to the total currency drop is adequate. This standard would not preclude comparisons to be made on a more frequent basis.

A commenter asked whether 542.12(u)(3) applies only to slot systems with a data collection system. Other commenters made some suggestions to provide more latitude in the procedures and equipment involved in the validation of cash-out tickets. The standard applies to slot systems with or without data collection systems. The Commission believes the procedures and equipment mandated in this standard are necessary to maintain an adequate degree of control.

A commenter stated that it is impossible to prevent completely the counterfeiting of cash-out tickets as required in 542.12(u)(9)(i). The Commission agrees that the prevention of counterfeiting may be impossible and as a result the standard has been

modified to require the mitigation of the risk of counterfeiting.

A commenter suggested that 542.12(v)(10)(iv) serves no useful purpose and should be eliminated. The Commission disagrees. The information in the payout form is necessary for cashless/coinless systems and should be readily available. These requirements apply only to coinless/cashless systems and not to traditional slot machines.

Commenters noted that the industry does not generally provide ''rules of the game'' brochures to patrons of gaming machines as required in 542.12(u)(11)(iv). The Commission agrees and the standard has been eliminated.

A commenter suggested that the requirement for observers in 542.12(v) be eliminated when a gaming operation utilizes ''Spintek'' and jackpot kiosks. The Commission disagrees and believes that observers are necessary to maintain an adequate degree of control.

A commenter suggested that the Commission should provide a description of requirements in 542.12(v)(7)(iii) on how the liability account should be documented. The Commission believes that the control as written is adequate and provides a level of specificity which allows individual operators the latitude of determining how the liability account should be documented.

A commenter stated that redemption of PIN cards in 542.12(v)(12) should be part of a gaming operation's policy and procedures and not a MICS. The Commission has modified the standard; however, the Commission believes the control procedure is necessary to protect the integrity of the system.

Section 542.13 Cage and Credit

A commenter asked whether 542.13(h)(1) applies to even exchanges. Even exchanges including cash for cash and chips for cash transactions do not have to be documented unless required by the Bank Secrecy Act and its implementing regulations.

Section 542.14 Internal Audit

Commenters suggested that it would be inappropriate for the internal auditing personnel to be employed by the gaming operation as required in 542.14(a)(1) when they may be reporting to an entity outside of the gaming operation. The Commission agrees and has modified this standard to provide more latitude in this requirement.

A commenter stated that it is inappropriate for the internal audit personnel to report to an entity outside of the gaming operation. The commenter believed that to change the direct reporting lines of the internal audit personnel is to disregard the Institute of Internal Auditor Code of Ethics; namely, to exercise honesty, objectivity, and diligence in the performance of their duties and responsibilities. This Commission's intention is not to disregard an internal auditor's code of ethics. Rather, the Commission is recognizing that Indian gaming is unique and the MICS should accommodate differing tribal government structures when feasible.

A commenter suggested that the requirement for reporting all instances of noncompliance should be changed to reporting only material instances. The Commission disagrees. In order to preserve an adequate system of checks and balances, documentation of all instances of noncompliance is necessary.

A commenter suggested that 542.14(a) be amended to permit the use of independent accountants for performing the internal audit function. The Commission disagrees with the need to amend the language. The regulations do not prohibit the use of independent accountants from performing the internal audit functions. Therefore, a tribe may use independent accountants to perform internal audit functions. However, the same independent accountants should not perform the evaluation of the gaming operation's internal control system as required in 542.3(d).

A commenter suggested that 542.14(e)(4) be eliminated because unannounced observations assume there is collusion and theft occurring and leads to a mistrustful work environment. The commenter also suggested that the internal audit or the independent accountant conduct unannounced observations only at the direction and approval of management and if they are necessary. The Commission disagrees. Unannounced observations are an integral part of internal auditing to ensure that proper procedures are being followed at all times. To subject such observations to the control of management will decrease the independence of internal audit.

Commenters found 542.14(g) concerning the audit of purchasing contracts to be confusing and suggested that the standard be eliminated. The Commission agrees and has deleted the standard.

Section 542.15 Surveillance

A commenter suggested that 542.15(b) be eliminated. The commenter also stated that 542.15(c) is too vague. The Commission disagrees. Section 542.12(b) helps assure that there is limited access to the surveillance room. Section 542.15(c) states the requirement but leaves the discretion to the tribes and the gaming operation as to how to fulfill the requirement.

A commenter sought clarification as to the requirement of ''staffed for all shifts'' in 542.15(g). This standard requires that at least one person is present in the surveillance room at all times.

A commenter stated that if the two cameras on the craps and roulette table are not on a split screen monitor they are hard to follow simultaneously and almost impossible to use as an exhibit in prosecution. Section 542.15(q), as written, does not specifically preclude usage of a split screen monitor as a result. It would appear usage of such technology would be allowable in accordance with this standard. The Commission, however, does not intend to mandate the use of split screen monitors at this time.

A commenter suggested that 542.15(y)(2) be modified by requiring monitoring and recording of the table games drop box storage rack or area by either a dedicated camera or a motion detector activated camera during the count only. The Commission disagrees and believes that the table games drop box storage rack area should be monitored and recorded at all times and not just during the count.

Section 542.16 Electronic Data Processing

Several commenters sought clarification of the application of the requirements of 542.16(a)(1). They asked whether all vendor contracts or just contracts concerning electronic data processing need to be in compliance with the MICS. Other commenters stated that the tribes and gaming operations do not control vendors and would not be able to require vendors to comply. They suggested that the Commission should eliminate this requirement. Other commenters suggested that this requirement should only apply to new contracts and should apply only to gaming or gaming-related software and not to personal computers. This standard applies only to vendor contracts concerning electronic data processing. The Commission believes that this standard is necessary to achieve the necessary degree of control. However, the Commission agrees that these standards should apply only to new purchases and to gaming and gaming-related software and not to personal computers.

A commenter sought clarification as to how long the disks must be retained in 542.16(d). The commenter also asked

how long a document must be retained once it is scanned into a WORM optical disk. Paragraph 542.16(d)(6) has been added to require retention of the disks for at least five years. The Commission has also added paragraph 542.16(d)(7) to require retention of the original documents for at least one year after they have been scanned to disk.

Section 542.17 Complimentary Services or Items

Several commenters stated that these regulations should not include MICS for complimentary items because they are not gaming and suggested deleting this section and all references to complimentary items in other sections. The Commission disagrees. Complimentary items are gaming related because they are used to attract new patrons, retain existing patrons and reward frequent patrons. Complimentary items affect gaming revenues directly or indirectly and abuse of the system would expose the gaming operation to high risk of loss.

A commenter suggested that the threshold in 542.17(b) be raised to $50. Another commenter suggested that the threshold should be raised to $25,000. The Commission raised the threshold to $50 but to establish the reporting threshold at $25,000 would make it difficult for management or the tribe to detect potential abuses of the complimentary system.

A commenter suggested that regulatory bodies (other than the tribe's) such as the Commission should not have access to the information in this section. The Commission disagrees. The Commission needs access to the information to fulfill its regulatory oversight responsibility.

Section 542.18 Variances

Several commenters suggested that the Commission permit Tier B and C gaming operations to request and obtain variances to ensure flexibility in these regulations. The Commission agrees and had modified this section to enable these gaming operations to seek variances.

Commenters suggested that it is inappropriate to permit gaming operations to apply directly to the Commission for a variance. They believe that the implementation and enforcement of these regulations should be through a government-to-government relationship. The Commission agrees and has deleted 542.18(d). However, variances will only be granted in extraordinary circumstances and after careful review. The Commission believes that most tribes should be able to comply fully with the standards in this rule.

Commenters suggested that the Commission establish a time period by which the Commission would make a decision on the requests for variances. Other commenters suggested that the Commission establish an appeal process for denials of requests. The Commission does not intend to set a time period or allow for appeals.

Section 542.19 Charitable Bingo Operation

A commenter supported the exemption for charitable bingo operations because they should be allowed to continue without complying with the rigorous standards of high-stakes tribal casino bingo.

Regulatory Matters

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*. Because many tribes already have MICS that are nearly as stringent, as stringent as or more stringent than those required by this proposed rule, it will not impose substantive requirements that could be deemed as impacts within the scope of the Act.

Paperwork Reduction Act

On October 17, 1998, the Commission received notice from the Office of Management and Budget (OMB) of its approval of the Commission's information collection system. The OMB control number is 3141–0009. The approval expires on October 31, 2001.

National Environmental Policy Act

The Commission has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environment Policy Act of 1969.

List of Subjects in 25 CFR Part 542

Accounting, Auditing, Gambling, Indian-lands, Indian-tribal government, Reporting and recordkeeping requirements.

For reasons stated in the preamble, the National Indian Gaming Commission adds 25 CFR Part 542 to read as follows:

PART 542—MINIMUM INTERNAL CONTROL STANDARDS

Sec.

Authority: 25 U.S.C. 2702, 2710 and 2717.

§ 542.1 What does this part cover?

This part establishes the minimum internal control standards for gaming operations on Indian land.

§ 542.2 What are the definitions for this part?

(a) The definitions in this section shall apply to all sections of this part unless otherwise noted.

(b) Definitions.

Accountability means all items of currency, chips, coins, tokens, receivables, and customer deposits constituting the total amount for which the bankroll custodian is responsible at a given time.

Accumulated credit payout means credit earned in a gaming machine that is paid to a customer manually in lieu of a machine payout.

Actual hold percentage means the percentage calculated by dividing the win by the drop or coin-in. Can be calculated for individual tables or slot machines, type of table games or slot machines on a per day or cumulative basis.

Adjustment form means a document used to describe and identify any change to player's account balance not generated directly by player gaming activity.

AICPA means the American Institute of Certified Public Accountants.

Bank or bankroll means the inventory of currency, coins, chips, checks, tokens, receivables, and customer deposits in the cage, pit area, gaming booths, and on the playing tables and cash in bank which is used to make change, pay winnings, bets, and pay gaming machine jackpots.

Bank number means a unique number assigned to identify a network of player terminals.

Betting station means the area designated in a race book that accepts and pays winning bets.

Betting ticket means a printed, serially numbered form used to record the event upon which a wager is made, the amount and date of the wager, and sometimes the line or spread (odds).

Bill validator (or currency acceptor) means a device that accepts and reads currency by denomination in order to accurately register customer credits at a gaming machine.

Boxman means the first-level supervisor who is responsible for directly participating in and supervising the operation and conduct of the craps game.

Breakage means the difference between actual bet amounts paid out by a race track to bettors and amounts won due to bet payments being rounded up or down. For example a winning bet that should pay $4.25 may be actually paid at $4.20 due to rounding.

Cage means a secure work area within the gaming operation for cashiers and a storage area for the gaming operation bankroll.

Cage accountability form means an itemized list of the components that make up the cage accountability.

Cage credit means advances in the form of cash or gaming chips made to customers at the cage. Documented by the players signing an IOU or a marker similar to a counter check.

Cage marker forms means a document, usually signed by the customer evidencing an extension of credit at the cage to the customer by the gaming operation.

Calibration module means the section of a weigh scale used to set the scale to a specific amount or number of coins to be counted.

Call bets means a wager made without money or chips, reserved for a known patron and includes marked bets (which are supplemental bets made during a hand of play). For the purpose of settling a call bet, a hand of play in craps is defined as a natural winner (*e.g.*, seven or eleven on the come-out roll), a natural loser (*e.g.*, a two, three or twelve on the come-out roll), a seven-out, or the player making his point, whichever comes first.

Card games means a game in which the gaming operation is not party to wagers and from which the gaming operation receives compensation in the form of a rake-off, a time buy-in, or other fee or payment from a player for the privilege of playing.

Card room bank means the operating fund assigned to the card room or main card room bank.

Cash-out ticket means an instrument of value generated by a gaming machine representing a monetary amount owed to a customer at a specific gaming machine. This investment may be wagered at other machines by depositing the cash-out ticket in the machine document acceptor.

Change ticket means an instrument of value automatically generated when a cash-out ticket includes change that cannot be wagered on a $1.00 and higher denomination machine. This instrument may be wagered at a lower denomination machine by depositing it in the machine document acceptor.

Chip tray means container located on gaming tables where chips are stored that are used in the game.

Chips mean money substitutes, in various denominations, issued by a gaming establishment and used for wagering.

Coin in meter means the meter that displays the total amount wagered in a gaming machine which includes coins-in and credits played.

Coin room inventory means coins and tokens stored in the coin room that are generally used for gaming machine department operation.

Coin room vault means an area where coins and tokens used in the gaming machine department operation are stored.

Complementaries or comps means promotional allowances to customers.

Count means the total funds counted for a particular game, coin-operated gaming device, shift, or other period.

Count room means a room where the coin and cash drop from gaming machines, table games or other games are transported to and counted.

Counter check means a form provided by the gaming operation for the customer to use in lieu of a personal check.

Credit means the right granted by a gaming operation to a patron to defer payment of debt or to incur debt and defer its payment.

Credit limit means the maximum dollar amount of credit assigned to a customer by the gaming operation.

Credit slip means a form used to record either:

(1) The return of chips from a gaming table to the cage; or

(2) The transfer of IOUs, markers, or negotiable checks from a gaming table to a cage or bankroll.

Currency acceptor (also known as a bill validator or bill changer), means the device that accepts and reads currency by denomination in order to accurately register customer credits at a gaming machine.

Currency acceptor drop means cash contained in currency acceptor drop boxes.

Currency acceptor drop box, also known as a cash storage box, means box attached to currency acceptors used to contain currency received by currency acceptors.

Currency acceptor drop box release key means the key used to release currency acceptor drop box from currency acceptor device.

Currency acceptor drop storage rack key means the key used to release currency acceptor drop boxes from the storage rack.

Customer deposits means the amounts placed with a cage cashier by customers for the customers' use at a future time.

Deal-in pull tabs games means the numerical sequence of all pull tabs in a specific pull tab game that are sold or available for sale to patrons.

Dealer/boxman means an employee who operates a game, individually or as a part of a crew, administering house rules and making payoffs.

Deskman means a person who authorizes payment of winning tickets and verifies pay-outs for keno games.

Document acceptor is the device integrated into each gaming machine that reads bar codes on coupons and cash-out tickets.

Draw ticket means a blank keno ticket whose numbers are punched out when balls are drawn for the game. Used to verify winning tickets.

Drop box means a locked container affixed to the gaming table into which the drop is placed. The game type, table number, and shift are indicated on the box.

Drop box contents keys means the key used to open drop boxes.

Drop box release keys means the key used to release drop boxes from tables.

Drop box storage rack keys means the key used to release drop boxes from the storage rack.

Drop bucket means a container located in the drop cabinet (or in a secured portion of the gaming machine in coinless/cashless configurations) for the purpose of collecting coins, tokens, cash-out tickets and coupons from the gaming machine.

Drop cabinet is the wooden or metal base of the gaming machine which

contains the gaming machine drop bucket.

Drop (for table games) means the total amount of cash and chips contained in the drop box, plus the amount of credit issued at the table; drop (for gaming machines) means the total amount of money, cash-out tickets or coupons removed from the drop bucket or currency acceptor.

Earned and unearned take means race bets taken on present and future race events. Earned take means bets received on current or present events. Unearned take means bets taken on future race events.

EPROM means erasable programmable read-only memory.

Fill means a transaction whereby a supply of chips or coins and tokens is transferred from a bankroll to a table game, coin-operated gaming device, bingo or keno department.

Fill slip means a document evidencing a fill.

Flare means the information sheet provided by the manufacturer that sets forth the rules at a particular game of breakopen tickets and that is associated with a specific deal of breakopen tickets. The flare shall contain the following information:

(1) Name of the game;

(2) Manufacturer name or manufacturer's logo;

(3) Ticket count; and

(4) Prize structure, which shall include the number of winning breakopen tickets by denomination, with their respective winning symbols, numbers or both.

Floor pars means the sum of the theoretical hold percentages of all machines within a gaming machine denomination weighted by the coin-in contribution.

Future wagers means bets on races to be run in the future (e.g., Kentucky Derby).

Game openers and closers means the form used by gaming operation supervisory personnel to document the inventory of chips, coins and tokens on a table at the beginning and ending of a shift.

Game server means an electronic selection device, utilizing a random number generator.

Gaming machine means an electronic or electromechanical machine which contains a microprocessor with random number generator capability which allows a player to play games of chance, some of which may be affected by skill, which machine is activated by the insertion of a coin, token or currency, or by the use of a credit, and which awards game credits, cash, tokens, or replays, or a written statement of the player's accumulated credits, which written statements are redeemable for cash.

Gaming machine analysis report means a report prepared that compares theoretical to actual hold by a gaming machine on a monthly or other periodic basis.

Gaming machine bill-in meter means a meter included on a gaming machine that accepts currency that tracks the number of bills put in the machine.

Gaming machine booths and change banks means a booth or small cage in the gaming machine area used to provide change to players, store change aprons and extra coin, and account for jackpot and other payouts.

Gaming machine count means the total amount of coins and tokens removed from a gaming machine drop bucket or bag. The amount counted is entered on the Gaming Machine Count Sheet and is considered the drop. Also, the procedure of counting the coins and tokens or the process of verifying gaming machine coin and token inventory.

Gaming machine count team means personnel that perform count of the gaming machine drop.

Gaming machine credit-in meter means a meter that records the amount wagered as a result of credits played.

Gaming machine drop cabinet means the stand that contains the drop bucket.

Gaming machine fill means the coins or tokens placed in a hopper.

Gaming machine fill and payout sheet means a list of the gaming machine fills and gaming machine payouts.

Gaming machine game mix means the type and number of games in a multiple game machine.

Gaming machine hopper loads means coins or tokens stored within a gaming machine used to make payments.

Gaming machine monitoring system means a system used by a gaming operation to monitor gaming machine meter reading activity on an online basis.

Gaming machine pay table means the reel strip combinations illustrated on the face of the gaming machine that can identify payouts of designated coin amounts.

Gaming machine weigh/count and wrap means the comparison of the weighed gaming machine drop to counted and wrapped coin.

Gaming operation accounts receivable (for gaming operation credit) means credit extended to gaming operation patrons in the form of markers, returned checks or other credit instruments that have not been repaid.

Gross gaming revenue means annual total amount of money wagered on Class II and Class III games and admission fees (including table or card fees), less any amounts paid out as prizes or paid for prizes awarded.

Hold means the relationship of win to coin-in for gaming machines and win to drop for table games.

Hub means the person or entity that is licensed to provide the operator of a race book information related to horse racing which is used to determine winners of races or payoffs on wagers accepted by the race book.

Inside ticket means a keno ticket retained by the house, showing the customers' selection of numbers, amount wagered, and number of games wagered.

Internal audit means individuals who perform an audit function of a gaming operation that are independent of the department subject to audit. Independence is obtained through the organizational reporting relationship as the internal audit department shall not report to management of the gaming operation. Internal audit activities should be conducted in a manner that permits objective evaluation of areas examined. Results of audits are generally communicated to management. Audit exceptions generally require follow-up. Internal audit personnel may provide audit coverage to more than one operation within a tribe's gaming operation holdings.

Issue slip means a copy of a credit instrument that is retained for numerical sequence control purposes.

Jackpot payout means the portion of a jackpot paid by gaming machine personnel. The amount is usually determined as the difference between the total posted jackpot amount and the coins paid out by the machine. May also be the total amount of the jackpot.

Jackpot payout slip means a form on which the amount of a jackpot paid by gaming machine personnel is recorded.

Keno locked box copy or restricted copy means copies of Keno tickets that are created for written tickets that cannot be accessed by Keno personnel.

Keno multi race or game ticket means a keno ticket that is played in multiple games.

Keno outstations means areas other than the main keno area where bets may be placed and tickets paid.

Lammer button means a type of chip that is placed on a gaming table to indicate that the amount of chips designated thereon has been given to the customer for wagering on credit prior to completion of the credit instrument. Lammer button may also mean a type of chip used to evidence transfers between table banks and card room banks.

Machine payout form means a document used to log all progressive jackpots and amounts won greater than $1,200.

Main card room bank means a fund of currency, coin, and chips used primarily for poker and pan card game areas. Used to make even money transfers between various games as needed. May be used similarly in other areas of the gaming operation.

Marker means a document, usually signed by the customer, evidencing an extension of credit to him by the gaming operation.

Marker credit play means that players are allowed to purchase chips using credit in the form of a marker.

Marker inventory form means a form maintained at table games or in the gaming operation pit that are used to track marker inventories at the individual table or pit.

Marker issue slip means the copy of an original marker that is inserted in the table drop box at the time credit is extended.

Marker payment slip means the copy of the original marker used to document customer marker payment transactions. The payment slip is inserted in the table drop box if the marker is paid in the pit or attached to the original marker until the marker is paid.

Marker transfer form means a form used to document transfers of markers from the pit to the cage.

Master credit record means a form to record the date, time, shift, game, table, amount of credit given, and the signatures or initials of the individuals extending the credit.

Master game program number means the game program number listed on a gaming machine EPROM.

Master game report sheet means a form used to record, by shift and day, each table game's winnings and losses. This form reflects the opening and closing table inventories, the fills and credits, and the drop and win.

Mechanical coin counter means a device used to count coins that may be used in addition to or in lieu of a coin weigh scale.

Meter means an electronic (soft) or mechanical (hard) apparatus in a gaming machine. May record the number of coins wagered, the number of coins dropped, the number of times the handle was pulled, or the number of coins paid out to winning players.

Metered count machine means a device used in a coin room to count coin.

MICS means minimum internal control standards.

Multi-game machines means a gaming machine that includes more than one type of game option.

Name credit instruments means personal checks, payroll checks, counter checks, hold checks, travelers checks or other similar instruments that are accepted in the pit as a form of credit issuance to a player.

Order for credit means a form that is used to request the transfer of chips or markers from a table to the cage. The order precedes the actual transfer transaction which is documented on a credit slip.

Outs means winning race book tickets that have not been paid at the end of a shift.

Outside ticket means a keno ticket given to a customer as a receipt, with the customer's selection of numbers, number of games wagered, game numbers, and the amount wagered marked on the ticket.

Par percentage means the percentage of each dollar wagered that the house wins (i.e., gaming operation advantage).

Par sheet means a specification sheet for a gaming machine that provides machine hold percentage, model number, hit frequency, reel combination, number of reels, number of coins that can be accepted and reel strip listing.

Pari-mutuel book means a race book that accepts pari-mutual wagers on horse races, jai-alai, greyhound and harness racing.

Pari-mutuel wagering means a system of wagering on horse races, jai-alai, greyhound and harness racing, where the winners divide the total amount wagered, net of commissions and operating expenses, proportionate to the individual amount wagered.

Payment slip means that part of a marker form on which customer payments are recorded.

PIN means personal identification number selected by player and used to access player's account.

Pit podium means stand located in the middle of the tables used as a work space and record storage area for gaming operation supervisory personnel.

Pit repayment means a customer's repayment of credit at a table.

Pit supervisor means the employee who supervises all games in a pit.

Player tracking system means a system typically used in gaming machine departments that can record the gaming machine play of individual patrons.

Post time in pari-mutuel wagering means the time when the track stops accepting bets in accordance with rules and regulations of the applicable jurisdiction.

Primary and secondary jackpots means promotional pools offered at certain card games that can be won in addition to the primary pot.

Progressive gaming machine means a gaming machine, with a payoff indicator, in which the payoff increases as it is played (i.e., deferred payout). The payoff amount is accumulated, displayed on a machine and will remain until a player lines up the jackpot symbols that result in the progressive amount being paid.

Progressive jackpots means deferred payout from a progressive gaming machine.

Progressive table game means table games that offer progressive jackpots.

Promotional payouts are generally personal property or awards given to players by the gaming operation as an inducement to play. Promotions vary but a promotion example might be a program developed where a player receives a form of personal property based on the number of games or sessions played.

Promotional progressive pots/pools means funds contributed to a table game by and for the benefit of players. Funds are distributed to players based on a predetermined event.

Proposition players means a person paid a fixed sum by the gaming operation for the specific purpose of playing in a card game. A proposition player makes wages with his own funds, retains his winnings, and absorbs his losses.

Rabbit ears means a device, generally V-shaped, that holds the numbered balls selected during a keno or bingo game so that the numbers are visible to players and employees.

Rake means a commission charged by the house for maintaining or dealing a game such as poker.

Rake circle means the area of a table where rake is placed.

Random number generator means a device that generates numbers in the absence of a pattern. May be used to determine numbers selected in various games such as keno and bingo. Also commonly used in gaming machines to generate game outcome.

Reel symbols means symbols listed on reel strips of gaming machines.

Rim credit means extensions of credit that are not evidenced by the immediate preparation of a marker and does not include call bets.

Runner means a gaming employee who transports chips/cash to and from a gaming table to a cashier.

Screen Automated Machine or SAM means an automated terminal used in some race books to accept wagers. SAM's also pay winning tickets in the

form of a voucher which is redeemable for cash at the race book.

Shift means any time period designated by management up to 24 hours.

Shill or game starter means an employee financed by the house and acting as a player for the purpose of starting or maintaining a sufficient number of players in a game.

Short pay means a payoff from a coin-operated gaming device that is less than the listed amount.

Sleeper means a winning keno ticket not presented for payment or a winning bet left on the table through a player's forgetfulness.

Soft count means the count of the contents in a drop box or currency acceptor.

Table bank par means the chip imprest amount at which a table bank is maintained.

Table chip tray means a container used to hold tokens, coins and chips at a gaming table.

Table games means games that are banked by the house or a pool whereby the house or the pool pays all winning bets and collects from all losing bets.

Table inventory means the total coins, chips, and markers at a table.

Table opener and closer means the document where chips and funds held at a table are recorded when a table inventory is taken. Also known as table inventory form.

Take and total take means the amount of a bet or bets taken in by a pari mutual race book.

Terminal number means a unique number assigned to identify a single player terminal in the gaming operation.

Theoretical hold means the intended hold percentage or win of an individual coin-operated gaming machine as computed by reference to its payout schedule and reel strip settings or EPROM.

Theoretical hold worksheet means a worksheet provided by the manufacturer for all gaming machines which indicate the theoretical percentages that the gaming machine should hold based on adequate levels of coin-in. The worksheet also indicates the reel strip settings, number of coins that may be played, the payout schedule, the number of reels and other information descriptive of the particular type of gaming machine.

Tier A means gaming operations with annual gross gaming revenues of no more than $3 million.

Tier B means gaming operations with annual gross gaming revenues of more than $3 million but not more than $10 million.

Tier C means gaming operations with annual gross gaming revenues of more than $10 million.

Tokens means a coinlike money substitute, in various denominations, used for gambling transactions.

Total take means the total amount of funds bet by a customer on a specific race book ticket.

Vault means a secure area within the gaming operation where tokens, checks, currency, coins, and chips are stored.

Weigh count means the value of coins and currency counted by a weigh machine.

Weigh scale calibration module means the device used to adjust a coin weigh scale.

Weigh scale interface means a communication device between the weigh scale used to calculate the amount of funds included in drop buckets and the computer system used to record the weigh data.

Weigh tape means the tape where weighed coin is recorded.

Wide area progressive gaming machine means a progressive gaming machine that makes deferred payouts where individual machines are linked to machines in other operations and all the machines affect the progressive amount. As a coin is inserted into a single machine, the progressive meter on all of the linked machines increases.

Win means the net win resulting from all gaming activities. Net win results from deducting all gaming losses from all wins prior to considering associated operating expenses.

Win to write hold percentage means bingo or Keno win divided by write to determine hold percentage.

Wrap means the procedure of wrapping coins. May also refer to the total amount or value of the wrapped coins.

Write means the total amount wagered in keno, and race and sports book operations.

Writer means an employee who writes keno or race and sports book tickets. A keno writer usually also makes payouts.

Writer machine means a locked device used to prepare keno or race and sports book tickets.

§ 542.3 How do I comply with this part?

(a) Within six months of February 4, 1999, each tribe or its designated tribal governmental body or agency shall establish by regulation and implement tribal minimum internal control standards which shall:

(1) Be at least as stringent as those set forth in this part;

(2) Contain standards for currency transaction reporting that comply with 31 CFR part 103;

(3) Establish standards for games which are not addressed in this part; and

(4) Establish a deadline, which shall not exceed twelve months from February 4, 1999, by which a gaming operation must come into compliance with the tribal minimum internal control standards. However, the tribe may extend the deadline by an additional six months if:

(i) The tribe submits a written request to the Commission to extend the deadline no later than two weeks prior to the expiration of the initial six month period;

(ii) The request includes an explanation of why the gaming operation cannot come into compliance within the initial six month period; and

(iii) The tribe has not received written notification from the Commission denying the request within two weeks following submission of the request.

(5) All gaming operations that are operating on or before March 31, 1999, shall comply with this part within the time requirements established in this paragraph. All gaming operations which commence operations after March 31, 1999, shall comply with this part prior to commencement of operations.

(b) Tribal regulations promulgated pursuant to this section shall not be required to be submitted to the Commission pursuant to 25 CFR 522.3 (b).

(c) Each gaming operation shall develop and implement an internal control system that, at a minimum, complies with the tribal minimum internal control standards.

(d) The independent certified public accountant (CPA) shall perform procedures to verify that the gaming operation's internal control system (ICS) is in substantial compliance with the tribal MICS by comparing the gaming operation's ICS to the tribal MICS. The CPA shall also perform procedures to verify, on a test basis, that the gaming operation has implemented and is in substantial compliance with its ICS. The procedures may be performed in conjunction with the annual audit. The CPA shall prepare a report of the findings for the tribe and management. The tribe shall submit a copy of the report to the Commission within 120 days of the gaming operation's fiscal year end.

§ 542.4 How do these regulations affect minimum internal control standards established in a Tribal-State compact?

(a) If an internal control standard or a requirement set forth in this part is more stringent than an internal control standard established in a Tribal-State

compact, then the internal control standard or requirement set forth in this part shall prevail. If a standard in a Tribal-State compact is more stringent than a standard set forth in this part, then the Tribal-State compact standard shall prevail.

(b) If there is a direct conflict between an internal control standard established in a Tribal-State compact and a standard or requirement set forth in this part, then the internal control standard established in a Tribal-State compact shall prevail.

(c) Nothing in this part shall grant to a state jurisdiction in class II gaming or extend a state's jurisdiction in class III gaming.

§ 542.5 What are the minimum internal control standards for bingo?

(a) Game play standards. (1) The functions of seller and payout verifier shall be segregated. Employees who sell cards on the floor shall not verify payouts with cards in their possession. Floor clerks who sell cards on the floor are permitted to announce the serial numbers of winning cards.

(2) All sales of bingo cards shall be documented by recording at least the following:

(i) Date;

(ii) Shift (if applicable);

(iii) Session (if applicable);

(iv) Dollar amount;

(v) Signature or initials of at least one seller (if manually documented); and

(vi) Signature or initials of person independent of seller who has randomly verified the card sales (this requirement is not applicable to locations with $1 million or less in annual write).

(3) The total write shall be computed and recorded by shift (or session, if applicable).

(4) The gaming operation shall develop and comply with procedures that ensure the correct calling of numbers selected in the bingo game.

(5) Each ball shall be shown to a camera immediately before it is called so that it is individually displayed to all patrons. For locations not equipped with cameras, each ball drawn shall be shown to an independent patron.

(6) For all coverall games and other games offering a payout of $1,200 or more, as the balls are called the numbers shall be immediately recorded by the caller and maintained for a minimum of 24 hours.

(7) Controls shall be present to assure that the numbered balls are placed back into the selection device prior to calling the next game.

(8) The authenticity of each payout shall be verified by at least two persons. A computerized card verifying system may function as the second person verifying the payout if the card with the winning numbers is displayed on a reader board.

(9) Payouts in excess of $1,200 shall require written approval, by supervisory personnel independent of the transaction, that the bingo card has been examined and verified with the bingo card record to ensure that the ticket has not been altered.

(10) Total payout shall be computed and recorded by shift or session, if applicable.

(b) If the gaming operation offers promotional payouts or awards, the payout form/documentation shall include the following information:

(1) Date and time;

(2) Dollar amount of payout or description of personal property (e.g., jacket, toaster, car, etc.);

(3) Type of promotion; and

(4) Signature of at least one employee authorizing and completing the transaction.

(c) All funds used to operate the bingo department shall be recorded on an accountability form. These funds shall be counted independently by at least two persons and reconciled to the recorded amounts at the end of each shift or session.

(d) Access and control of bingo equipment shall be restricted as follows:

(1) Access to controlled bingo equipment (e.g., blower, balls in play, and back-up balls) shall be restricted to authorized persons.

(2) Procedures shall be established to inspect new bingo balls put into play as well as for those in use.

(3) Bingo equipment shall be maintained and checked for accuracy on a periodic basis.

(4) The bingo card inventory shall be controlled so as to assure the integrity of the cards being used as follows:

(i) Purchased paper shall be inventoried and secured by an individual independent from the bingo sales;

(ii) The issue of paper to the cashiers shall be documented and signed for by the inventory control department and cashier. The document log shall include the numerical sequence of the bingo paper;

(iii) A copy of the bingo paper control log shall be given to the bingo ball caller for purposes of determining if the winner purchased the paper that was issued to the gaming operation that day;

(iv) At the end of each month an independent department shall verify the accuracy of the ending balance in the bingo paper control by counting the paper on-hand;

(v) Monthly the amount of paper sold from the bingo paper control log shall be compared to the amount of revenue for reasonableness.

(e) Data concerning bingo shall be maintained as follows:

(1) Records shall be maintained which include win, write (card sales), and a win-to-write hold percentage for:

(i) Each shift or each session;

(ii) Each day;

(iii) Month-to-date; and

(iv) Year-to-date or fiscal year-to-date.

(2) Non-bingo management shall review bingo statistical information at least on a monthly basis and investigate any large or unusual statistical fluctuations.

(3) Investigations shall be documented and maintained for Commission inspection.

(f) If the gaming operation utilizes electronic equipment in connection with the play of bingo, then the following standards shall also apply:

(1) If the electronic equipment contains a currency acceptor, then § 542.12(g) (as applicable) shall apply.

(2) If the electronic equipment uses a bar code or microchip reader, the reader shall be tested periodically by an entity independent of Bingo personnel to determine that it is correctly reading the bar code or the microchip.

(3) If the electronic equipment returns a voucher or a payment slip to the player, then § 542.12(u) (as applicable) shall apply.

(g) For any authorized computer applications, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

(h) Standards for linked electronic games. (1) Host requirements/game information. (i) Providers of any linked electronic game(s) shall maintain complete records of game data for a period of one (1) year from the date the games are played (or a time frame established by the Tribe). This data may be kept in an archived manner, provided the information can be produced within 24 hours upon request. In any event, game data for the preceding 72 hours shall be immediately accessible;

(ii) Data required to be maintained for each game played includes:

(A) Date and time game start and game end.

(B) Sales information by location.

(C) Money distribution by location.

(D) Refund totals by location.

(E) Cards-in-play count by location.

(F) Identification number of winning card(s).

(G) Ordered list of bingo balls drawn.

(H) Prize amounts at start and end of game.

(2) Host requirements/sales information.

(i) Providers of any linked electronic game(s) shall maintain complete records of sales data for a period of one (1) year from the date the games are played (or a time frame established by the Tribe). This data may be kept in an archived manner, provided the information can be produced within 24 hours upon request. In any event, sales data for the preceding 10 days shall be immediately accessible. Summary information must be accessible for at least 120 days.

(ii) Sales information required shall include:

(A) Daily sales totals by location.

(B) Commissions distribution summary by location.

(C) Game-by-game sales, prizes, refunds, by location.

(D) Daily network summary, by game by location.

(3) Remote host requirements.

(i) Linked game providers shall maintain online records at the remote host site for any game played. These records shall remain online until the conclusion of the session of which the game is a part. Following the conclusion of the session, records may be archived, but in any event, must be retrievable in a timely manner for at least 72 hours following the close of the session. Records shall be accessible through some archived media for at least 90 days from the date of the game;

(ii) Game information required includes date and time of game start and game end, sales totals, money distribution (prizes) totals, and refund totals;

(iii) Sales information required includes cash register reconciliations, detail and summary records for purchases, prizes, refunds, credits, and game/sales balance for each session.

(i) Standards for player accounts (for proxy play and linked electronic games). (1) Prior to participating in any game, players shall be issued a unique player account number. The player account number can be issued through the following means:

(i) Through the use of a point-of-sale (cash register device);

(ii) By assignment through an individual play station;

(iii) Through the incorporation of a ''player tracking'' media.

(2) Printed receipts issued in conjunction with any player account should include a time/date stamp.

(3) All player transactions shall be maintained, chronologically by account number, through electronic means on a data storage device. These transaction records shall be maintained online throughout the active game and for at least 24 hours before they can be stored on an ''off-line'' data storage media.

(4) The game software shall provide the ability to, upon request, produce a printed account history, including all transactions, and a printed game summary (total purchases, deposits, wins, debits, for any account that has been active in the game during the preceding 24 hours).

(5) The game software shall provide a ''player account summary'' at the end of every game. This summary shall list all accounts for which there were any transactions during that game day and include total purchases, total deposits, total credits (wins), total debits (cash-outs) and an ending balance.

§ 542.6 What are the minimum internal control standards for pull tabs?

(a) Standards for statistical reports.

(1) Records shall be maintained which include win, write (sales) and a win to write hold percentage as compared to the theoretical hold percentage derived from the flare for:

(i) Each deal or type of game;

(ii) Each shift;

(iii) Each day;

(iv) Month-to-date; and

(v) Year-to-date or fiscal year-to-date as applicable.

(2) Non Pull Tab management independent of pull tab personnel shall review statistical information at least on a monthly basis and shall investigate any large or unusual statistical fluctuations. These investigations shall be documented and maintained for inspection.

(3) Each month, the actual hold percentage shall be compared to the theoretical hold percentage. Any significant variations shall be investigated.

(b) Winning pull tabs shall be verified and paid as follows:

(1) Payouts in excess of a dollar amount determined by the tribe shall be verified by at least two employees.

(2) Total payout shall be computed and recorded by shift.

(3) The winning Pull Tabs shall be voided so that they cannot be presented for payment again.

(c) Personnel independent of Pull Tab management shall verify the amount of winning Pull Tabs redeemed each day.

(d) Pull Tab inventory (including unused tickets) shall be controlled, so as to assure the integrity of the Pull Tabs.

(1) Purchased pull tabs shall be inventoried and secured by an individual independent from the pull tab sales.

(2) The issue of pull tabs to the cashier or sales location shall be documented and signed for by the inventory control department and the cashier or tribal official witnessing the fill. The document log shall include the serial number of the pull tabs.

(3) Appropriate documentation shall be given to the redemption booth for purposes of determining if the winner purchased the pull tab that was issued by the gaming operation.

(4) At the end of each month, an independent department shall verify the accuracy of the ending balance in the pull tab control by counting the pull tabs on hand.

(5) Monthly, a comparison shall be done, of the amount of pull tabs sold from the pull tab control log to the amount of revenue recognized for reasonableness.

(e) Access to Pull Tabs shall be restricted to authorized persons.

(f) Transfers of Pull Tabs from storage to the sale location shall be secured and independently controlled.

(g) All funds used to operate the pull tabs game shall be recorded on an accountability form.

(h) For any authorized computer application, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

(i) If the gaming operation utilizes electronic equipment in connection with the play of pull tabs, then the following standards shall also apply:

(1) If the electronic equipment contains a currency acceptor, then § 542.12(g) shall apply (as applicable).

(2) If the electronic equipment uses a bar code or microchip reader, the reader shall be tested periodically to determine that it is correctly reading the bar code or microchip.

(3) If the electronic equipment returns a voucher or a payment slip to the player, then § 542.12(u) (as applicable) shall apply.

§ 542.7 What are the minimum internal control standards for card games?

(a) Standards for supervision. (1) Supervision shall be provided at all times the card room is in operation by personnel with authority equal to or greater than those being supervised.

(2) Transfers between table banks and the main card room bank (or cage, if a main card room bank is not used) shall be authorized by a supervisor and evidenced by the use of a lammer. (A lammer is not required if the exchange of chips, tokens, and/or currency takes place at the table.)

(3) Transfers from the main card room bank (or cage, if a main card room bank is not used) to the table banks shall be verified by the card room dealer and the runner.

(4) If applicable, transfers between the main card room bank and the cage shall be properly authorized and documented.

(5) A rake shall be collected in accordance with the posted rules unless authorized by a supervisor.

(b) Standards for drop and count. The procedures for the collection of card games drop boxes and the count of the contents thereof shall comply with the internal control standards applicable to the pit drop boxes.

(c) Playing cards, both used and unused, shall be maintained in a secure location to prevent unauthorized access and to reduce the possibility of tampering. Used cards shall be maintained in a secure location until marked or destroyed to prevent unauthorized access and reduce the possibility of tampering. The tribe shall establish a reasonable time period within which to mark and remove cards from play which shall not exceed seven days. A card control log shall be maintained that documents when cards are received on site, distributed to and returned from tables and removed from the gaming operation.

(d) Notwithstanding paragraph (c) of this section, if a gaming operation uses plastic cards (not plastic-coated cards), the cards may be used for up to three months if the plastic cards are washed or cleaned at least every three days.

(e) Standards for reconciliation of card room bank.

(1) The amount of the main card room bank shall be counted, recorded, and reconciled on at least a per shift basis.

(2) At least once per shift the table banks shall be counted, recorded, and reconciled by a dealer (or other individual if the table is closed) and a supervisor, and shall be attested to by their signatures on the check-out form.

(f) Standards for shills and proposition players.

(1) Issuance of shill funds shall have the written approval of the supervisor.

(2) Shill returns shall be recorded and verified on the shill sign-out form.

(3) The replenishment of shill funds shall be documented.

(g) Standards for promotional progressive pots and pools.

(1) All funds contributed by players into the pools shall be returned when won in accordance with the posted rules with no commission or administrative fee withheld.

(2) Rules governing promotional pools shall be conspicuously posted in a location visible from each table, and designate:

(i) The amount of funds to be contributed from each pot;

(ii) What type of hand it takes to win the pool (e.g., what constitutes a ''bad beat'');

(iii) How the promotional funds will be paid out;

(iv) How/when the contributed funds are added to the jackpots; and

(v) Amount/percentage of funds allocated to primary and secondary jackpots, if applicable.

(3) Promotional pool contributions shall not be placed in or near the rake circle, in the drop box, or commingled with gaming revenue from card games or any other gambling game.

(4) Promotional funds removed from the card game shall be placed in a locked container in plain view of the public.

(5) Persons authorized to transport the locked container shall be precluded from having access to the contents keys.

(6) The contents key shall be maintained by a department independent of the card room.

(7) At least once a day, the locked container shall be removed by two individuals, one of whom is independent of the card games department, and transported directly to the cage or other secure room to be counted.

(8) If the funds are maintained in the cage, the contents shall be counted, recorded, and verified prior to accepting the funds into cage accountability.

(9) The amount of the jackpot shall be conspicuously displayed in the card room. At least once a day the progressive sign or meter, if applicable, shall be updated to reflect the current pool amount.

(10) At least once a day increases to the progressive sign/meter shall be reconciled to the cash previously counted or received by the cage.

(h) For any authorized computer applications, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

§ 542.8 What are the minimum internal control standards for manual keno?

(a) Physical controls over equipment. (1) The keno write and desk area shall be restricted to specified personnel (desk area is restricted to preclude writers from accessing inside tickets).

(2) Effective periodic maintenance shall be planned to service keno equipment.

(3) Keno equipment maintenance shall be independent of the operation of the keno game.

(4) Keno maintenance shall report irregularities to management personnel independent of keno, either in writing or verbally.

(5) Keno balls in use shall be safeguarded to prevent tampering. The gaming operation shall establish and comply with procedures for inspecting new keno balls put into play as well as for those being used.

(6) There shall be safeguards over electronic equipment to prevent access and/or tampering.

(b) Game play standards. (1) The individual controlling inside tickets shall:

(i) Be precluded from writing and making payouts, including during the writer's break periods; or

(ii) Have all winning tickets written by him with payouts exceeding $100.00 verified, regraded, and compared to the inside ticket by another keno employee. Additionally, this individual writes tickets out of his own predesignated writer's station and bank (unless a community bank is used).

(2) At no time shall a keno game with annual write of greater than or equal to $500,000 be operated by one person.

(3) Both inside and outside keno tickets shall be stamped with the date, ticket sequence number, and game number (as applicable to the system being used). The ticket shall indicate that it is multi-race (if applicable).

(4) The game openers and closers shall be stamped with the date, ticket sequence number, and game number. An alternative which provides the same controls may be acceptable.

(5) Controls shall exist to ensure that inside tickets have been received from outstations prior to calling of a game.

(6) Controls shall exist to prevent the writing and voiding of tickets after a game has been closed and the number selection process for the game has begun.

(7) A legible restricted copy of written keno tickets shall be created (carbonized locked box copy, microfilm, videotape, etc.) for, at a minimum, all winning tickets exceeding $30.00. If there are no restricted copies of winning tickets of $30.00 or less, then the desk person shall not write tickets.

(8) When it is necessary to void a ticket which contains the sequence number, the ticket shall be designated as ''void'' and initialed or signed by at least one person.

(c) Standards for number selection. (1) A camera shall be utilized to film the following both prior to, and subsequent to, the calling of a game:

(i) Empty rabbit ears;

(ii) Date and time;

(iii) Game number, and

(iv) Full rabbit ears.

(2) The picture of the rabbit ears on the camera shall provide a legible identification of the numbers on the balls drawn.

(3) Keno personnel shall produce a draw ticket as numbers are drawn, and such tickets contain the race number, numbers drawn, and date. The draw ticket shall be verified to the balls drawn by a second keno employee.

(4) A gaming operation shall establish and comply with procedures which prevent unauthorized access to keno balls in play.

(5) Back-up keno ball inventories shall be secured in a manner to prevent unauthorized access.

(6) A gaming operation shall establish effective procedures for inspecting new keno balls put into play as well as for those in use.

(d) Winning tickets shall be verified and paid as follows:

(1) All winning tickets shall be compared with the draw ticket by the writer before being paid, marked with evidence that the ticket was ''paid'' and marked with the amount of the payout.

(2) Payouts over a predetermined amount (not to exceed $30.00) shall be verified by actual examination of the inside ticket.

(3) Wins over a specified dollar amount (not to exceed $10,000 for locations with annual keno write in excess of $5,000,000 and $3,000 for all other locations) shall also require the following:

(i) Approval of management personnel independent of the keno department evidenced by their signature;

(ii) Examination of films of rabbit ears prior to and after the game is called to determine that the same numbers called were not left up from the prior game and to verify the accuracy of the draw ticket;

(iii) If necessary, film may be developed as soon as possible after payouts;

(iv) Regrading of the inside ticket and comparison of both the winning ticket presented for payment and the inside ticket to the restricted copy (machine copy, microfilm, videotape, etc.);

(v) Procedures described in this paragraph shall be documented for later verification and reconciliation by the keno audit process on a ball check form.

(e) A cash summary report (count sheet) shall be prepared for the end of every shift which includes:

(1) Computation of cash proceeds for the shift by bank (i.e., community bank or individual writer banks, whichever is applicable); and

(2) Signatures in ink of two employees who have verified the cash proceeds recorded in the computation in paragraph (e)(1).

(f) Statistics shall be maintained as follows:

(1) Records shall be maintained which include (for each game) win, write, and win-to-write hold percentage for:

(i) Each shift;

(ii) Each day;

(iii) Month-to-date; and

(iv) Calendar or fiscal year-to-date, as applicable.

(2) Non-keno management shall review keno statistical information at least on a monthly basis and investigate any large or unusual statistical fluctuations.

(3) Such investigations shall be documented and maintained.

(4) The accounting department or someone who is independent of the keno writer and desk person, shall calculate and indicate in a summary report the total ''write'' by game and shift, total ''payout'' by game and shift, and the ''win/loss'' by game and shift.

(5) At a minimum, investigations shall be performed for statistical percentage fluctuations from the base level for a month in excess of +/−3%. The base level is defined as the gaming operations win percentage for the previous business year or the previous 12 months.

(g) Key control standards. (1) Keys to locked box tickets shall be maintained by a department independent of the keno function.

(2) The master panel, which safeguards the wiring that controls the sequence of the game, shall be locked at all times to prevent unauthorized access. Someone independent of the Keno department is required to accompany such keys to the Keno area and observe repairs or refills each time locked boxes are accessed.

(3) Master panel keys shall be maintained by a department independent of the keno function.

(4) Microfilm machine keys shall be maintained by personnel who are independent of the keno writer function.

(5) Someone independent of the keno writer function (e.g., a keno supervisor who doesn't write or someone independent of keno) shall be required to observe each time the microfilm machine is accessed by keno personnel.

(6) Keno equipment discussed in this section shall always be locked when not being accessed.

(7) All electrical connections shall be wired in such a manner so as to prevent tampering.

(8) Duplicate keys to the above areas shall be maintained independently of the keno department.

(h) Standards for keno audit. (1) The accounting department shall perform the various audit functions of keno and shall include verification on a sample basis at least once a week of the total ''write'' by writer and shift (from inside tickets for microfilm or videotape system or from locked box copies for a writing machine system), the total ''payout'' by writer and shift, and the ''win/loss'' by writer and shift.

(2) Audit procedures may be performed up to one month following the transaction.

(3) Keno audit personnel shall total (or ''foot'') write (either inside ticket or restricted copy) and payouts (customer copy) to arrive at an audited win/loss by shift.

(4) Keno audit personnel shall obtain an audited win/loss for each bank (i.e., individual writer or community). The keno audit function is independent of the keno department for the next five standards.

(5) The keno receipts (net cash proceeds) shall be compared with the audited win/loss by keno audit personnel.

(6) Major cash variances (i.e., overages or shortages in excess of $25.00) noted in the comparison in paragraph (h)(5) of this section shall be investigated on a timely basis.

(7) On a sample basis (for at least one race per shift or ten races per week) keno audit personnel shall perform the following, where applicable:

(i) Regrade winning tickets utilizing the payout schedule and draw tickets and compare winning tickets (inside and outside) to restricted copies (locked box copy, developed microfilm, videotape, etc.) for 100% of all winning tickets of $100.00 or greater and 25% of all winning tickets under $100.00 for those races selected;

(ii) Either review sequential numbering on inside tickets (microfilm and videotape systems) to ensure that tickets have not been destroyed to alter the amount of write, or compute write from developed film and compare to write computed from inside tickets;

(iii) Review restricted copies for blank tickets and proper voiding of voids;

(iv) Ensure the majority of the races in the sample selected contain payouts in excess of $100.00 but less than the amount established for the independent verification required by paragraph (d)(3) of this section.

(8) In addition to the audit procedures in paragraph (h)(7) of this section, when a keno game is operated by one person:

(i) At least 25% of all other winning tickets shall be regraded;

(ii) At least 10% of all tickets shall be traced to the restricted copy;

(iii) Film of rabbit ears shall be randomly compared to draw tickets for at least 25% of the races;

(9) The keno audit function shall be independent of the keno shift being audited when performing standards in paragraphs (h)(7) (i), (ii), and (iii) of this section.

(10) Draw tickets shall be compared to rabbit ears film for at least five races per week with payouts which do not require draw ticket verification independent of the keno department. (The draw information may be compared to the rabbit ears at the time the balls are drawn provided it is done without the knowledge of keno personnel and it is subsequently compared to the keno draw ticket.)

(11) Documentation (e.g., logs, checklists, etc.) shall be maintained and shall evidence the performance of all keno audit procedures.

(12) Non-keno management shall review keno audit exceptions, perform investigations into unresolved exceptions and document results.

(13) Copies of all Keno tickets and the video tape of the rabbit ears shall be maintained for at least seven days.

(i) Standards for multi-race keno tickets. (1) Procedures shall be established to notify keno personnel immediately of large multi-race winners to ensure compliance with the standard in paragraph (d)(3) of this section.

(2) Controls shall exist to ensure that keno personnel are aware of multi-race tickets still in process at the end of a shift.

(j) For any authorized computer applications, alternate documentation and/or procedures that are at least at the level of control described by the standards in this section may be acceptable.

§ 542.9 What are the minimum internal control standards for computerized keno?

(a) Game play standards. (1) The computerized customer ticket shall include the date, game number, ticket sequence number, station number, and conditioning (including multi-race if applicable).

(2) Concurrently with the generation of the ticket the information on the ticket shall be recorded on a restricted transaction log or computer storage media.

(3) Keno personnel shall be precluded from access to the restricted transaction log or computer storage media.

(4) When it is necessary to void a ticket, the void information shall be inputted in the computer and the computer shall document the appropriate information pertaining to the voided wager (e.g., void slip is issued or equivalent documentation is generated).

(5) Controls shall exist to prevent the writing and voiding of tickets after a game has been closed and after the number selection process for that game has begun.

(6) The controls in effect for tickets prepared in outstations (if applicable) shall be identical to those in effect for the primary keno game.

(b) The following standards shall apply if a rabbit ear system is utilized:

(1) A camera shall be utilized to film the following both prior to, and subsequent to, the calling of a game:

(i) Empty rabbit ears;

(ii) Date and time;

(iii) Game number; and

(iv) Full rabbit ears.

(2) The film of the rabbit ears shall provide a legible identification of the numbers on the balls drawn.

(3) Keno personnel shall immediately input the selected numbers in the computer and the computer shall document the date, the game number, the time the game was closed, and the numbers drawn.

(4) A gaming operation shall establish and comply with procedures which prevent unauthorized access to keno balls in play.

(5) Back-up keno ball inventories shall be secured in a manner to prevent unauthorized access.

(6) The gaming operation shall establish and comply with procedures for inspecting new keno balls put into play as well as for those in use.

(c) The following standards shall apply if a random number generator is utilized:

(1) The random number generator shall be linked to the computer system and shall directly relay the numbers selected into the computer without manual input.

(2) Keno personnel shall be precluded from access to the random number generator.

(d) Winning tickets shall be verified and paid as follows:

(1) The sequence number of tickets presented for payment shall be inputted into the computer, and the payment amount generated by the computer shall be given to the patron.

(2) A gaming operation shall establish and comply with procedures to preclude payment on tickets previously presented for payment, unclaimed winning tickets (sleepers) after a specified period of time, voided tickets, and tickets which have not been issued yet.

(3) All payouts shall be supported by the customer (computer-generated) copy of the winning ticket (payout amount is indicated on the customer ticket or a payment slip is issued).

(4) A manual report or other documentation shall be produced and maintained documenting any payments made on tickets which are not authorized by the computer.

(5) Winning tickets over a specified dollar amount (not to exceed $10,000 for locations with more than $5 million annual keno write and $3,000 for all other locations) shall also require the following:

(i) Approval of management personnel independent of the keno department, evidenced by their signature;

(ii) Review of the videotape or development of the film of the rabbit ears to verify the legitimacy of the draw and the accuracy of the draw ticket (for rabbit ear systems only);

(iii) Comparison of the winning customer copy to the computer reports;

(iv) Regrading of the customer copy using the payout schedule and draw information; and

(v) Documentation and maintenance of the procedures in this paragraph.

(6) When the keno game is operated by one person, all winning tickets in excess of an amount to be determined by management (not to exceed $1,500) shall be reviewed and authorized by someone independent of the keno department.

(e) Check out standards at the end of each keno shift. For each writer station, a cash summary report (count sheet) shall be prepared that includes:

(1) Computation of net cash proceeds for the shift and the cash turned in; and (2) Signatures of two employees who have verified the net cash proceeds for the shift and the cash turned in.

(f) If a gaming operation offers promotional payouts and awards, the payout form/documentation shall include the following information:

(1) Date and time;

(2) Dollar amount of payout or description of personal property (e.g., jacket, toaster, car, etc.);

(3) Type of promotion; and

(4) Signature of at least one employee authorizing and completing the transaction;

(g) Statistics shall be maintained as follows:

(1) Records shall be maintained which include win and write by individual writer for each day.

(2) Records shall be maintained which include (for each licensed game) win, write, and win-to-write hold percentage for:

(i) Each shift;

(ii) Each day;

(iii) Month-to-date; and

(iv) Year-to-date or fiscal year-to-date as applicable.

(3) Non-keno management independent from the keno personnel

shall review keno statistical data at least on a monthly basis and investigate any large or unusual statistical variances.

(4) At a minimum, investigations shall be performed for statistical percentage fluctuations from the base level for a month in excess of +/− 3%. The base level shall be defined as the gaming operation's win percentage for the previous business year or the previous 12 months.

(5) Such investigations shall be documented and maintained.

(h) System security standards. (1) All keys (including duplicates) to sensitive computer hardware in the keno area shall be maintained by a department independent of the keno function.

(2) Someone independent of the keno department shall be required to accompany such keys to the keno area and shall observe changes or repairs each time the sensitive areas are accessed.

(i) A gaming operation shall comply with the following documentation standards:

(1) Adequate documentation of all pertinent keno information shall be generated by the computer system.

(2) This documentation shall be restricted to authorized personnel.

(3) The documentation shall include, at a minimum:

(i) Ticket information (as described in paragraph (a)(1) of this section);

(ii) Payout information (date, time, ticket number, amount, etc.);

(iii) Game information (number, ball draw, time, etc.);

(iv) Daily recap information which includes:

(A) Write;

(B) Payouts; and

(C) Gross revenue (win);

(v) System exception information, including:

(A) Voids;

(B) Late pays; and

(C) Appropriate system parameter information (e.g., changes in pay tables, ball draws, payouts over a predetermined amount, etc.); and

(vi) Personnel access listing which includes at least:

(A) Employee name;

(B) Employee identification number; and

(C) Listing of functions employee can perform or equivalent means of identifying same.

(j) Keno audit standards.

(1) The keno audit function shall be independent of the keno department.

(2) At least annually, keno audit shall foot the write on the restricted copy of the keno transaction report for a minimum of one shift and compare the total to the total as documented by the computer.

(3) For at least one shift every other month keno audit shall perform the following:

(i) Foot the customer copy of the payouts and trace the total to the payout report; and

(ii) Regrade at least 1% of the winning tickets using the payout schedule and draw ticket;

(4) Keno audit shall perform the following:

(i) For a minimum of five games per week, compare the videotape/film of the rabbit ears to the computer transaction summary;

(ii) Compare net cash proceeds to the audited win/loss by shift and investigate any large cash overages or shortages (i.e., in excess of $25.00);

(iii) Review and regrade all winning tickets greater than or equal to $1,500, including all forms which document that proper authorizations and verifications were obtained and performed;

(iv) Review the documentation for payout adjustments made outside the computer and investigate large and frequent payments;

(v) Review personnel access listing for inappropriate functions an employee can perform;

(vi) Review system exception information on a daily basis for propriety of transactions and unusual occurrences including changes to the personnel access listing;

(vii) If a random number generator is used, then at least weekly review the numerical frequency distribution for potential patterns; and

(viii) Investigate and document results of all noted improper transactions or unusual occurrences.

(5) When the keno game is operated by one person:

(i) The customer copies of all winning tickets in excess of $100 and at least 5% of all other winning tickets shall be regraded and traced to the computer payout report;

(ii) The videotape/film of rabbit ears shall be randomly compared to the computer game information report for at least 10% of the games during the shift;

(iii) Keno audit personnel shall review winning tickets for proper authorization pursuant to paragraph (d)(6) of this section.

(6) In the event any person performs the writer and deskman functions on the same shift, the procedures described in paragraphs (j)(5) (i) and (ii) of this section (using the sample sizes indicated) shall be performed on tickets written by that person.

(7) Documentation (e.g., a log, checklist, etc.) which evidences the performance of all keno audit procedures shall be maintained.

(8) Non-keno management shall review keno audit exceptions, and perform and document investigations into unresolved exceptions.

(9) When a multi-game ticket is part of the sample in paragraphs (j)(3)(ii), (j)(5) (i) and (j)(6) of this section, the procedures may be performed for 10 games or 10% of the games won, whichever is greater.

(k) Access to the computer system shall be adequately restricted (i.e., passwords are changed at least quarterly, access to computer hardware is physically restricted, etc.).

(l) There shall be effective maintenance planned to service keno equipment, including computer program updates, hardware servicing, and keno ball selection equipment (e.g., service contract with lessor).

(m) Keno equipment maintenance (excluding keno balls) shall be independent of the operation of the keno game.

(n) Keno maintenance shall report irregularities to management personnel independent of keno.

(o) All documents, including computer storage media discussed in this section shall be retained for five (5) years except for the following which shall be retained for at least seven (7) days:

(1) Videotape of rabbit ears;

(2) All copies of winning keno tickets of less than $1,500.00; and

(3) The information required in paragraph (i) (3) of this section.

(p) Procedures shall be established to notify keno personnel immediately of large multi-race winners to ensure compliance with standards in paragraphs (d)(5) (i) through (v). Procedures shall be established to ensure that keno personnel are aware of multi-race tickets still in process at the end of a shift.

(q) For any authorized computer applications, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

§ 542.10 What are the minimum internal control standards for pari-mutuel wagering?

(a) Betting ticket and equipment standards. (1) All pari-mutuel wagers shall be transacted through the pari-mutuel satellite system. In case of computer failure between the pari-mutuel book and the hub, no tickets shall be manually written.

(2) Whenever a betting station is opened for wagering or turned over to a new writer/cashier, the writer/cashier shall sign on and the computer shall

document gaming operation name, station number, the writer/cashier identifier, and the date and time.

(3) A betting ticket shall consist of at least three parts:

(i) An original which shall be transacted and issued through a printer and given to the patron;

(ii) A copy which shall be recorded concurrently with the generation of the original ticket either on paper or other storage media (e.g., tape or diskette);

(iii) A restricted copy which shall not be accessible to book employees; and

(iv) For automated systems the second copy referred to in paragraph (a)(3)(ii) and the restricted copy referred to in paragraph (a)(3)(iii) may be retained within the automated system.

(4) Upon accepting a wager, the betting ticket which is created shall contain the following:

(i) An alpha-numeric ticket number (the alpha-numeric need not be used if the numeric series is not used during the business year);

(ii) Gaming operation name and station number;

(iii) Race track, race number, horse identification or event identification, as applicable;

(iv) Type of bet(s), each bet amount, total number of bets, and total take; and

(v) Date and time.

(5) All tickets shall be considered final at post time.

(6) If a book voids a betting ticket written prior to post time:

(i) A void designation shall be immediately branded by the computer on the ticket;

(ii) All voids shall be signed by the writer/cashier and the supervisor at the time of the void; and

(iii) A ticket may be voided manually by inputting the ticket sequence number and immediately writing/stamping a void designation on the original ticket.

(7) Future wagers shall be accepted and processed in the same manner as regular wagers.

(b) Payout standards. (1) Prior to making payment on a ticket the writer/cashier shall input the ticket for verification and payment authorization.

(2) The system shall brand the ticket with a paid designation, the amount of payment and date, or if a writer/cashier manually inputs the ticket sequence number into the computer, the writer/cashier shall immediately date stamp and write/stamp a paid designation on the patron's ticket.

(3) The computer shall be incapable of authorizing payment on a ticket which has been previously paid, a voided ticket, a losing ticket, or an unissued ticket.

(4) In case of computer failure, tickets may be paid. In those instances where system failure has occurred and tickets are manually paid, a log shall be maintained which includes:

(i) Date and time of system failure;

(ii) Reason for failure; and

(iii) Date and time system is restored.

(5) A log for all manually paid tickets shall be maintained which shall include:

(i) An alpha-numeric ticket number (the alpha-numeric need not be used if the numeric series is not used during the business year);

(ii) Gaming operation name and station number;

(iii) Racetrack, race number, runner identification or event identification, as applicable;

(iv) Type of bet(s), each bet amount, total number of bets and total take; and

(v) Date and time.

(6) All manually paid tickets shall be entered into the computer system as soon as possible to verify the accuracy of the payout (this does not apply to purged, unpaid winning tickets). All manually paid tickets shall be regraded as part of the end-of-day audit process should the computer system be inoperative.

(c) Checkout standards. (1) Whenever the betting station is closed or the writer/cashier is replaced, the writer/cashier shall sign off and the computer shall document the gaming operation name, station number, the writer/cashier identifier, the date and time, and cash balance.

(2) For each writer/cashier station a summary report shall be completed at the conclusion of each shift including:

(i) Computation of cash turned in for the shift; and

(ii) Signatures of two employees who have verified the cash turned in for the shift.

(d) Pari-mutuel book employees shall be prohibited from wagering on race events while on duty, including during break periods and from wagering on race events occurring while the employee is on duty.

(e) Computer reports standards. (1) Adequate documentation of all pertinent pari-mutuel information shall be generated by the computer system.

(2) This documentation shall be restricted to authorized personnel.

(3) The documentation shall be created daily and shall include, but is not limited to:

(i) Ticket/voucher number;

(ii) Date/time of transaction;

(iii) Type of wager;

(iv) Horse identification or event identification;

(v) Amount of wagers (by ticket, writer/SAM, track/event, and total);

(vi) Amount of payouts (by ticket, writer/SAM, track/event, and total);

(vii) Tickets refunded (by ticket, writer, track/event, and total);

(viii) Unpaid winners/vouchers (''outs'') (by ticket/voucher, track/event, and total);

(ix) Voucher sales/payments (by ticket, writer/SAM, and track/event);

(x) Voids (by ticket, writer, and total);

(xi) Future wagers (by ticket, date of event, total by day, and total at the time of revenue recognition);

(xii) Results (winners and payout data);

(xiii) Breakage data (by race and track/event);

(xiv) Commission data (by race and track/event); and

(xv) Purged data (by ticket and total).

(4) The system shall generate the following reports:

(i) A daily reconciliation report that summarizes totals by track/event, including write, the day's winning ticket total, total commission and breakage due the gaming operation, and net funds transferred to or from the gaming operation's bank account;

(ii) An exception report that contains a listing of all system functions and overrides not involved in the actual writing or cashing of tickets, including sign-on/off, voids, and manually input paid tickets; and

(iii) A purged ticket report that contains a listing of ticket numbers, description, ticket cost and value, and date purged.

(f) A gaming operation shall perform the following accounting and auditing functions:

(1) The pari-mutuel audit shall be conducted by someone independent of the race, sports, and pari-mutuel operations.

(2) Documentation shall be maintained evidencing the performance of all pari-mutuel accounting and auditing procedures.

(3) An accounting employee shall examine the daily reconciliation report, compare it to the revenue summary produced by the system, and recalculate the net amount due to or from the systems operator. An accounting employee shall reconcile transfers with the bank statements on a monthly basis.

(4) The auditor shall verify daily cash turn-in by comparing actual cash turned in to cash turn-in per pari-mutuel reports (Beginning balance, (+) fills (draws), (+) net write (sold less voids), (−) payouts (net of IRS withholding), (−) moneybacks (paids), (=) cash turn-in).

(5) For one track/event per day, the auditor shall verify commissions per the daily reconciliation report by recalculating track/event commissions.

(6) For the track/event selected above, the auditor shall verify daily transfers

due to/from the systems operator by recalculating the deposits (Net sales, (+) negative breakage, (−) commissions, (−) positive breakage, (−) accrual pays, (=) deposit).

(7) An accounting employee shall produce a gross revenue recap report to calculate gross revenue on a daily and month-to-date basis, including the following totals:

(i) Commission;

(ii) Positive breakage;

(iii) Negative breakage;

(iv) Track/event fees;

(v) Track/event fee rebates; and

(vi) Purged tickets.

(8) Track/event fees and track/event fee rebates shall be traced to the invoices received from the systems operator.

(9) All winning tickets and vouchers from the SAM's shall be removed on a daily basis by an accounting employee.

(10) SAM's winning tickets and vouchers shall be immediately delivered to the accounting department.

(11) The auditor shall perform the following procedures:

(i) For one SAM per day, foot the winning tickets and vouchers deposited and trace to the totals of SAM activity produced by the system;

(ii) Foot the listing of cashed vouchers and trace to the totals produced by the system;

(iii) Review all exceptions for propriety of transactions and unusual occurrences;

(iv) Review all voids for propriety;

(v) For one day per week, verify the results as produced by the system to the results provided by an independent source;

(vi) For one day per week, regrade 1% of paid (cashed) tickets to ensure accuracy and propriety; and

(vii) When applicable, reconcile the daily totals of future tickets written to the totals produced by the system for both unearned and earned take, and review the reports to ascertain that future wagers are properly included on the day of the event.

(12) At least annually the auditor shall perform the following:

(i) Foot the wagers for one day and trace to the total produced by the system; and

(ii) Foot the customer copy of paid tickets for one day and trace to the total produced by the system.

(13) At least one day per quarter, the auditor shall recalculate and verify the change in the unpaid winners to the total purged tickets.

(g) For any computer applications utilized, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

§ 542.11 What are the minimum internal control standards for table games?

(a) Where a standard in this section requires a minimum of three employees to perform a function or be present during one, Tier A and B gaming operations may require only two employees to be present.

(b) If a gaming operation allows marker credit play (exclusive of rim credit and call bets), the following standards shall apply:

(1) A marker system shall allow for credit to be both issued and repaid in the pit. A name credit system shall allow for the issuance of credit without using markers.

(2) Prior to the issuance of gaming credit to a player, the employee extending the credit shall contact the cashier or other independent source to determine if the player's credit limit has been properly established and there is sufficient remaining credit available for the advance.

(3) Proper authorization of credit extension in excess of the previously established limit shall be documented.

(4) The amount of credit extended shall be communicated to the cage or another independent source and the amount documented within a reasonable time subsequent to each issuance.

(5) The marker form shall be prepared in at least triplicate form (triplicate form being defined as three parts performing the functions delineated in the standard in paragraph (b)(6) of this section), with a preprinted or concurrently-printed marker number, and utilized in numerical sequence (This requirement shall not preclude the distribution of batches of markers to various pits.).

(6) At least three parts of each separately numbered marker form shall be utilized as follows:

(i) Original shall be maintained in the pit until settled or transferred to the cage;

(ii) Payment slip shall be maintained in the pit until the marker is settled or transferred to the cage. If paid in the pit, the slip shall be inserted in the table drop box. If not paid, the slip shall be transferred to the cage with the original;

(iii) Issue slip shall be inserted into the appropriate table drop box when credit is extended or when the player has signed the original.

(7) When marker documentation (e.g., issue slip and payment slip) is inserted in the drop box, such action shall be performed by the dealer or boxman at the table.

(8) A record shall be maintained which details the following (e.g., master credit record retained at the pit podium):

(i) The signature or initials of the individual(s) approving the extension of credit (unless such information is contained elsewhere for each issuance);

(ii) The legible name of the individual receiving the credit;

(iii) The date and shift of granting the credit;

(iv) The table on which the credit was extended;

(v) The amount of credit issued;

(vi) The marker number;

(vii) The amount of credit remaining after each issuance or the total credit available for all issuances;

(viii) The amount of payment received and nature of settlement (e.g., credit slip number, cash, chips, etc.); and

(ix) The signature or initials of the individual receiving payment/settlement.

(9) The forms required in paragraphs (b) (5), (6), and (8) of this section shall be safeguarded, and adequate procedures shall be employed to control the distribution, use, and access to these forms.

(10) All credit extensions shall be initially evidenced by lammer buttons which shall be displayed on the table in public view and placed there by supervisory personnel.

(11) Marker preparation shall be initiated and other records updated within approximately one hand of play following the initial issuance of credit to the player.

(12) Lammer buttons shall be removed only by the dealer or boxman employed at the table upon completion of a marker transaction.

(13) The original marker shall contain at least the following information: marker number, player's name and signature, date, and amount of credit issued.

(14) The issue slip or stub shall include the same marker number as the original, the table number, date and time of issuance, and amount of credit issued. The issue slip or stub shall also include the signature of the individual extending the credit, and the signature or initials of the dealer or boxman at the applicable table, unless this information is included on another document verifying the issued marker.

(15) The payment slip shall include the same marker number as the original. When the marker is paid in full in the pit, it shall also include the table number where paid, date and time of payment, nature of settlement (cash, chips, etc.) and amount of payment. The payment slip shall also include the signature of a pit supervisor acknowledging payment, and the

signature or initials of the dealer or boxman receiving payment, unless this information is included on another document verifying the payment of the marker.

(16) When partial payments are made in the pit, a new marker shall be completed reflecting the remaining balance and the marker number of the marker originally issued.

(17) When partial payments are made in the pit, the payment slip of the marker which was originally issued shall be properly cross-referenced to the new marker number, completed with all information required by paragraph (b)(16) of this section, and inserted into the drop box.

(18) The cashier's cage or another independent source shall be notified when payments (full or partial) are made in the pit so that cage records can be updated for such transactions. Notification shall be made no later than when the patron's play is completed or at shift end, whichever is earlier.

(19) The Tribe shall implement appropriate controls for purpose of security and integrity. The Tribe shall establish and comply with procedures for collecting and recording checks returned to the gaming operation after deposit which include re-deposit procedures. These procedures shall provide for notification of cage/credit departments and custodianship of returned checks.

(20) All portions of markers, both issued and unissued, shall be safeguarded and procedures shall be employed to control the distribution, use and access to the forms.

(21) An investigation shall be performed to determine the cause and responsibility for loss whenever marker forms, or any part thereof, are missing. The result of the investigation shall be documented and maintained for inspection.

(22) When markers are transferred to the cage, marker transfer forms or marker credit slips (or similar documentation) shall be utilized and such documents shall include, at a minimum, the date, time, shift, marker number(s), table number(s), amount of each marker, the total amount transferred, signature of pit supervisor releasing instruments from the pit, and the signature of cashier verifying receipt of instruments at the cage.

(23) All markers shall be transferred to the cage within 24 hours of issuance.

(24) Markers shall be transported to the cashier's cage by an individual who is independent of the marker issuance and payment functions (pit clerks may perform this function).

(c) The following standards shall apply if personal checks or other name credit instruments are accepted in the pit:

(1) Prior to accepting a name credit instrument, the employee extending the credit shall contact the cashier or another independent source to determine if the player's credit limit has been properly established and the remaining credit available is sufficient for the advance.

(2) All name credit instruments shall be transferred to the cashier's cage (utilizing a two-part order for credit) immediately following the acceptance of the instrument and issuance of chips (If name credit instruments are transported accompanied by a credit slip, an order for credit is not required).

(3) The order for credit (if applicable) and the credit slip shall include the patron's name, amount of the credit instrument, the date, time, shift, table number, signature of pit supervisor releasing instrument from pit, and the signature of cashier verifying receipt of instrument at the cage.

(4) The procedures for transacting table credits at standards in paragraphs (b)(16) through (f)(23) of this section shall be strictly adhered to.

(5) The acceptance of payments in the pit for name credit instruments shall be prohibited.

(d) The following standards shall apply if call bets are accepted in the pit:

(1) A call bet shall be evidenced by the placement of a lammer button, chips, or other identifiable designation in an amount equal to that of the wager in a specific location on the table.

(2) The placement of the lammer button, chips, or other identifiable designation shall be performed by supervisory/boxmen personnel. The placement may be performed by a dealer only if the supervisor physically observes and gives specific authorization.

(3) The call bet shall be settled at the end of each hand of play by the preparation of a marker, repayment of the credit extended, or the payoff of the winning wager. Call bets extending beyond one hand of play shall be prohibited.

(4) The removal of the lammer button, chips, or other identifiable designation shall be performed by the dealer/boxman upon completion of the call bet transaction.

(e) The following standards shall apply if rim credit is extended in the pit:

(1) Rim credit shall be evidenced by the issuance of chips to be placed in a neutral zone on the table and then extended to the patron for the patron to wager, or to the dealer to wager for the patron, and by the placement of a lammer button or other identifiable designation in an amount equal to that of the chips extended.

(2) Rim credit shall be recorded on player cards, or similarly used documents, which shall be:

(i) Prenumbered or concurrently numbered and accounted for by a department independent of the pit;

(ii) For all extensions and subsequent repayments, evidenced by the initials or signatures of a supervisor and the dealer attesting to the Validity of each credit extension and repayment;

(iii) An indication of the settlement method (e.g., serial number of marker issued, chips, cash);

(iv) Settled no later than when the patron leaves the table at which the card is prepared;

(v) Transferred to the accounting department on a daily basis;

(vi) Reconciled with other forms utilized to control the issuance of pit credit (e.g., master credit records, table cards).

(f) If foreign currency is accepted in the pit, the following standards shall apply:

(1) Foreign currency transactions shall be authorized by a pit supervisor/boxman who completes a foreign currency exchange form prior to the exchange for chips or tokens;

(2) Foreign currency exchange forms include the country of origin, total face value, amount of chips/token extended (i.e., conversion amount), signature of supervisor/boxman, and the dealer completing the transaction;

(3) Foreign currency exchange forms and the foreign currency shall be inserted in the drop box by the dealer.

(g) Fill and credit standards. (1) Fill slips and credit slips shall be in at least triplicate form, in a continuous numerical series, and prenumbered and concurrently numbered in a form utilizing the alphabet and only in one series at a time. The alphabet need not be used if the numerical series is not repeated during the business year.

(2) Unissued and issued fill/credit slips shall be safeguarded and adequate procedures shall be employed in the distribution, use and control of same. Personnel from the cashier or pit departments shall have no access to the locked box copies of the fill, credit slips.

(3) When a fill/credit slip is voided, the cashier shall clearly mark ''void'' across the face of the original and first copy, the cashier and one other person independent of the transactions shall sign both the original and first copy, and shall submit them to the accounting department for retention and accountability.

(4) Fill transactions shall be authorized by a pit supervisor prior to the issuance of fill slips and transfer of chips, tokens, or monetary equivalents. The fill request shall be communicated to the cage where the fill slip is printed.

(5) At least three parts of each fill slip shall be utilized as follows:

(i) One part shall be transported to the pit with the fill and, after the appropriate signatures are obtained, deposited in table drop box;

(ii) One part shall be retained in the cage for reconciliation of cashier bank; and

(iii) One part shall be retained intact by the locked machine in a continuous unbroken form.

(6) For Tier C gaming operations, the part of the fill slip that is placed in the drop box shall be of a different color for fills than for credits, unless the type of transaction is clearly distinguishable in another manner (the checking of a box on the form shall not be a clearly distinguishable indicator).

(7) The table number, shift, and amount of fill by denomination and in total shall be noted on all copies of the fill slip. The correct date and time shall be indicated on at least two copies.

(8) All fills shall be carried from the cashier's cage by an individual who is independent of the cage or pit.

(9) The fill slip shall be signed by at least the following individuals (as an indication that each has counted the amount of the fill and the amount agrees with the fill slip):

(i) Cashier who prepared the fill slip and issued the chips, tokens, or monetary equivalent;

(ii) Runner who carried the chips, tokens, or monetary equivalents from the cage to the pit;

(iii) Dealer who received the chips, tokens, or monetary equivalents at the gaming table; and

(iv) Pit supervisor who supervised the fill transaction.

(10) Fills shall be either broken down or verified by the dealer in public view before the dealer places the fill in the table tray.

(11) All fill slips requesting chips or money shall be prepared at the time a fill is made.

(12) A copy of the fill slip shall then be deposited into the drop box on the table by the dealer, where it shall appear in the soft count room with the cash receipts for the shift.

(13) When table credits are transacted, a two-part order for credit shall be prepared by the pit supervisor for transferring chips, tokens, or monetary equivalents from the pit to the cashier area or other secure area of accountability.

(14) The duplicate copy of an order for credit shall be retained in the pit to check the credit slip for proper entries and to document the total amount of chips, tokens, and monetary equivalents removed from the table.

(15) At least three parts of each credit slip shall be utilized as follows:

(i) One part shall be retained in the cage for reconciliation of the cashier bank;

(ii) One part shall be transported to the pit by the runner who transports chips, tokens, markers, or monetary equivalents from the pit to the cage, and after the appropriate signatures are obtained, deposited in the table drop box;

(iii) One part shall be retained by the locked machine intact in a continuous unbroken form.

(iv) However, if chips, tokens and monetary equivalents are transported accompanied by a credit slip, an order for credit shall not be required.

(16) The table number, shift, and the amount of credit by denomination and in total shall be noted on all copies of the credit slip. The correct date and time shall be indicated on at least two copies.

(17) Chips, tokens and/or monetary equivalents shall be removed from the table tray by the dealer and shall be broken down or verified by the dealer in public view prior to placing them in racks for transfer to the cage.

(18) All chips, tokens, and monetary equivalents removed from the tables and markers removed from the pit shall be carried to the cashier's cage by an individual who is independent of the cage or pit.

(19) The credit slip shall be signed by at least the following individuals (as an indication that each has counted or, in the case of markers, reviewed the items transferred):

(i) Cashier who received the items transferred from the pit and prepared the credit slip;

(ii) Runner who carried the items transferred from the pit to the cage and returned to the pit with the credit slip;

(iii) Dealer who had custody of the items prior to transfer to the cage; and

(iv) Pit supervisor who supervised the credit transaction.

(20) The credit slip shall be inserted in the drop box by the dealer.

(21) Chips, tokens, or other monetary equivalents shall be deposited on or removed from gaming tables only when accompanied by the appropriate fill/credit or marker transfer forms.

(h) Drop procedures standards. (1) At the close of each shift:

(i) Each table's chip, token, coin, and marker inventory shall be counted and recorded on a table inventory form; or

(ii) If the table banks are maintained on an imprest basis, a final fill or credit shall be made to bring the bank back to par.

(2) If final fills are not made, beginning and ending inventories shall be recorded on the master game sheet for shift win calculation purposes.

(3) The accuracy of inventory forms prepared at shift end shall be verified by the outgoing pit supervisor and a dealer, another pit supervisor, or another supervisor from another gaming department. Verifications shall be evidenced by signature on the inventory form.

(4) If inventory forms are placed in the drop box, such action shall be performed by someone other than a pit supervisor.

(5) The setting out of empty drop boxes and the drop shall be a continuous process.

(6) Procedures shall be developed and implemented to insure that unauthorized access to empty drop boxes shall not occur from the time the boxes leave the storage racks until they are placed on the tables.

(7) At the end of each shift:

(i) All locked drop boxes shall be removed from the tables by an individual independent of the pit shift being dropped;

(ii) A separate drop box shall be placed on each table each shift or a gaming operation operator may utilize a single drop box with separate openings and compartments for each shift; and

(iii) Upon removal from the tables, drop boxes shall be transported directly to the count room or other secure place and locked in a secure manner until the count takes place.

(8) If drop boxes are not placed on all tables, then the pit department shall document which tables were open during the shift.

(9) The transporting of drop boxes shall be performed by a minimum of two individuals, at least one of whom shall be independent of the pit shift being dropped. This standard does not apply to Tier A gaming operations.

(10) All drop boxes shall be posted with a number corresponding to a permanent number on the gaming table and marked to indicate game, table number and shift.

(i) Soft count standards. (1) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect which prevent the commingling of funds from different revenue centers.

(2) The soft count shall be performed by a minimum of three employees. A second count shall be performed by an

employee on the count team who did not perform the initial count.

(3) At no time during the count shall there be fewer than three employees in the count room until the monies have been accepted into cage/vault accountability.

(4) Count team members shall be rotated on a routine basis (rotation is such that the count team is not consistently the same three individuals more than four days per week). This standard shall not apply to Tier A gaming operations.

(5) The count team shall be independent of transactions being reviewed and counted and the subsequent accountability of soft drop proceeds. A dealer or a cage cashier may be used if this person is not allowed to perform the recording function. An accounting representative may be used if there is an independent audit of all soft count documentation.

(6) The drop boxes shall be individually emptied and counted in such a manner to prevent the commingling of funds between boxes until the count of the box has been recorded.

(7) The count of each box shall be recorded in ink or other permanent form of recordation.

(8) If currency counters are utilized and the count room table is used only to empty boxes and sort/stack contents, a count team member shall be able to observe the loading and unloading of all currency at the currency counter, including rejected currency.

(9) Drop boxes, when empty, shall be shown to another member of the count team, to another person who is observing the count, or to recorded or live surveillance, provided the count is monitored in its entirety by someone independent to the count.

(10) Orders for fill/credit (if applicable) shall be matched to the fill/credit slips.

(11) Fills and credits shall be traced to or recorded on the count sheet and examined for correctness.

(12) Pit marker issue and payment slips removed from the drop boxes shall either be:

(i) Traced to or recorded on the count sheet by the count team; or

(ii) Totaled by shift and traced to the totals documented by the computerized system. Accounting personnel shall verify the issue/payment slip for each table is accurate.

(13) Foreign currency exchange forms removed from the drop boxes shall be reviewed for the proper daily exchange rate and the conversion amount shall be recomputed by the count team. Alternatively, this may be performed by accounting/auditing employees.

(14) The opening/closing table and marker inventory forms (if applicable) shall either be:

(i) Examined and traced to or recorded on the count sheet; or

(ii) If a computerized system is used, accounting personnel can trace the opening/closing table and marker inventory forms (if applicable) to the count sheet. Discrepancies shall be investigated with the findings documented and maintained for inspection.

(15) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

(16) The count sheet shall be reconciled to the drop by a count team member who shall not function as the sole recorder.

(17) All members of the count team shall attest by signature to their participation in the games drop. The count team supervisor shall attest to the accuracy of the games drop.

(18) All monies and monetary equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person independent of the revenue generation and the count process for verification.

(19) The individual mentioned in paragraph (i)(18) shall certify by signature as to the accuracy of the monies delivered and received.

(20) Access to stored drop boxes, full or empty, shall be restricted to authorized members of the drop and count teams.

(21) Access to the count room during the count shall be restricted to members of the drop and count teams, excluding authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(22) The count sheet, with all supporting documents, shall be promptly delivered to the accounting department by a count team member or someone other than the cashier's department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(j) Key control standards. (1) The involvement of at least two individuals independent of the cage department shall be required to access stored empty drop boxes.

(2) Drop box release keys standards. (i) The keys shall be maintained by a department independent of the pit department;

(ii) Only the person authorized to remove drop boxes from the tables shall be allowed access to the release keys; however, the count team members may have access to the release keys during the soft count in order to reset the drop boxes; and

(iii) Persons authorized to drop the table games drop boxes shall be precluded from having access to drop box contents keys.

(3) Storage rack keys standards. (i) Someone independent of the pit department shall be required to accompany such keys and observe each time drop boxes are removed from or placed in storage racks. This paragraph shall not apply to Tier A and Tier B gaming operations;

(ii) Persons authorized to obtain drop box storage rack keys shall be precluded from having access to drop box contents keys with the exception of the count team.

(4) Drop box contents keys standards. (i) The physical custody of the keys needed for accessing stored full drop box contents shall require the involvement of persons from at least two separate departments.

(ii) Access to the contents key at other than scheduled count times shall require the involvement of at least three persons from separate departments, including management, and the reason for access shall be documented with the signatures of all participants and observers.

(iii) Only count team members shall be allowed access to drop box content keys during the soft count process.

(5) At least three (two for three tables or less) count team members are required to be present at the time count room and other soft count keys are issued for the soft count.

(6) All duplicate keys shall be maintained in a manner which provides the same degree of control over drop boxes as is required for the original keys. Records shall be maintained for each key duplicated which indicate the number of keys made and destroyed.

(7) Logs are maintained by the custodian of sensitive keys to document authorization of personnel accessing keys.

(k) Table games computer generated documentation standards. (1) The computer system shall be capable of generating adequate documentation of all information recorded on the source documents and transaction detail (e.g., fill/credit slips, markers, etc.).

(2) This documentation shall be restricted to authorized personnel.

(3) The documentation shall include, at a minimum, system exception information (e.g., appropriate system parameter information, corrections, voids, etc.).

(4) Personnel access listing which includes, at a minimum:

(i) Employee name;

(ii) Employee identification number (if applicable); and

(iii) Listing of functions employees can perform or equivalent means of identifying the same.

(5) For any authorized computer applications utilized, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

(l) Playing cards and dice, not yet issued to the pit, shall be maintained in a secure location to prevent unauthorized access and reduce the possibility of tampering. Used cards and dice shall be maintained in a secure location until ''marked'', ''scored'' or ''destroyed'' to prevent unauthorized access and reduce the possibility of tampering. Used playing cards and dice shall be canceled or destroyed in a timely manner not to exceed seven days. However, this standard shall not apply where playing cards or dice are retained for an investigation.

(m) Pit supervisory personnel (with authority equal to or greater than those being supervised) shall provide supervision of all table games.

(n) Analysis of table game performance standards. (1) Records shall be maintained by day and shift indicating any single-deck blackjack games which were dealt for an entire shift.

(2) Records reflecting hold percentage by table and type of game shall be maintained by shift, by day, cumulative month-to-date, and cumulative year-to-date.

(3) This information shall be presented to and reviewed by management independent of the pit department on at least a monthly basis.

(4) The management in paragraph (n)(3) of this section shall investigate any unusual fluctuations in hold percentage with pit supervisory personnel.

(5) The results of such investigations shall be documented in writing and maintained.

(o) Table games accounting/auditing procedures.

(1) The accounting and auditing procedures shall be performed by personnel who are independent of the transactions being audited/accounted for.

(2) If a table game has the capability to determine drop (e.g., bill-in/coin-drop meters, bill validator, computerized record, etc.) the dollar amount of the drop shall be reconciled to the actual drop by shift.

(3) Accounting/auditing employees shall review exception reports for all computerized table games systems at least monthly for propriety of transactions and unusual occurrences.

(4) All noted improper transactions or unusual occurrences shall be investigated with the results documented.

(5) Evidence of table games auditing procedures and any follow-up performed shall be maintained and be available upon request by the Commission.

(6) A daily recap shall be prepared for the day and month-to-date which shall include the following information:

(i) Pit credit issues;

(ii) Pit credit payments in chips;

(iii) Pit credit payments in cash;

(iv) Drop;

(v) Win; and

(vi) Gross revenue.

(p) For any computer applications utilized, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

§ 542.12 What are the minimum internal control standards for gaming machines?

(a) When a standard in this section requires a minimum of three employees to perform a function or be present during one, Tier A and Tier B gaming operations may require only two employees to be present.

(b) For this section only, credit or customer credit means a unit of value equivalent to cash or cash equivalents deposited, wagered, won, lost or redeemed by a patron.

(c) Coins shall include tokens.

(d) Coin drop standards. (1) A minimum of three employees shall be involved in the removal of the gaming machine drop, at least one of whom is independent of the gaming machine department.

(2) Count room personnel shall not be allowed to exit or enter the count room during the count except for emergencies or scheduled breaks. At no time when uncounted funds are present shall there be less than three (3) persons in the count room.

(3) Each gaming operation shall maintain on file the time when the drop buckets and bill acceptor canisters will be removed and the time when the contents are to be counted.

(4) All drop buckets or canisters shall be removed only at the time previously designated except for emergency drops.

(5) The gaming machine drop supervisor shall notify surveillance when the drop is to begin in order that surveillance may monitor the activities.

(6) Surveillance shall record in a proper log or journal in a legible manner any exceptions or variations to established procedures observed during the drop. Such log or journal shall be made available for review to authorized persons only.

(7) Security shall be provided over the buckets removed from the gaming machine drop cabinets prior to being transported to the count room.

(8) As each machine is opened, the contents shall be tagged with its respective machine number if the bucket is not permanently marked with the machine number. The contents shall be transported directly to the area designated for the counting of such monies. If more than one trip is required to remove the contents of the machines, the filled carts of coins shall be securely locked in the room designed for counting. There shall be a locked covering on any carts in which the drop route includes passage out of doors.

(9) Each drop bucket in use shall be:

(i) Housed in a locked compartment separate from any other compartment of the gaming machine and keyed differently than other gaming machine compartments; and

(ii) Identifiable to the gaming machine from which it is removed (i.e., permanently marked with the gaming machine I.D. number, or bar coded labels, printed tags, etc.). If the gaming machine is identified with a removable tag which is placed in the bucket, the tag shall be placed on top of the bucket when it is collected.

(10) Each gaming machine shall have drop buckets into which coins or tokens that are retained by the gaming machine are collected. Drop bucket contents shall not be used to make change or pay hand-paid payouts.

(11) The collection procedures may include procedures for dropping gaming machines which have trays instead of drop buckets.

(e) Equipment standards. (1) A weigh scale calibration module shall be secured so as to prevent unauthorized access (e.g., prenumbered seal, lock and key, etc.).

(2) Someone independent of the cage, vault, gaming machine, and count team functions shall be required to be present whenever the calibration module is accessed.

(3) Such access shall be documented and maintained.

(4) If a weigh scale interface is used, it shall be adequately restricted so as to prevent unauthorized access (passwords, keys, etc.).

(5) If the weigh scale has a zero adjustment mechanism, it shall be physically limited to minor adjustments (e.g., weight of a bucket) or physically situated such that any unnecessary adjustments to it during the weigh process would be observed by other count team members.

(6) The weigh scale and weigh scale interface (if applicable) shall be tested by someone who is independent of the cage, vault and gaming machine departments and count team at least quarterly. At least semi-annually, this test shall be performed by internal audit in accordance with the internal audit standards. The result of these tests shall be documented and signed by the person(s) performing the test.

(7) During the gaming machine count, at least two employees shall verify the accuracy of the weigh scale with varying weights or with varying amounts of previously counted coin for each denomination to ensure the scale is properly calibrated (varying weights/coin from drop to drop is acceptable).

(8) If a mechanical coin counter is used (instead of a weigh scale), the gaming operation shall establish and comply with procedures that are equivalent to those described in paragraphs (c)(7), (c)(8), and (c)(9) of this section.

(9) If a coin meter count machine is used, the count team member shall record the machine number denomination and number of coins in ink on a source document, unless the meter machine automatically records such information.

(f) Gaming machine count and wrap standards.

(1) The weigh/count shall be performed by a minimum of three employees.

(2) At no time during the weigh/count shall there be fewer than three employees in the count room.

(3) The gaming machine count team shall be independent of the gaming machine department and the subsequent accountability of gaming machine count proceeds, unless they are non-supervisory gaming machine employees and perform the laborer function only. (A non-supervisory gaming machine employee is defined as a person below the level of gaming machine shift supervisor.)

(4) The following functions shall be performed in the counting of the gaming machine drop:

(i) Recorder function which involves the recording of the gaming machine count;

(ii) Count team supervisor function which involves the control of the gaming machine weigh and wrap process.

(5) The amount of the gaming machine drop from each machine shall be recorded in ink on a gaming machine count document by the recorder or mechanically printed by the weigh scale. If a weigh scale interface is used, the gaming machine drop figures are transferred via direct line or computer storage media.

(6) The recorder and at least one other count team member shall sign the weigh tape and the gaming machine count document attesting to the accuracy of the weigh/count.

(7) At least three employees who participate in the weigh/count and/or wrap process shall sign the gaming machine count document or a summary report to attest to their presence. If all other count team members do not sign the gaming machine count document or a summary report, they shall sign a supplemental document evidencing their participation in the weigh/count and/or wrap.

(8) The coins shall be wrapped and reconciled in a manner which precludes the commingling of gaming machine drop coin with coin (for each denomination) from the next gaming machine drop.

(9) At least two employees shall be present throughout the wrapping of the gaming machine drop.

(10) If the gaming machine count is conducted with a continuous mechanical count meter which is not reset during the count and is verified in writing by at least three employees at the start and end of each nomination count, then one employee may perform the wrap.

(11) The coins shall be wrapped immediately after being weighed or counted. As the coin is being wrapped, it shall be maintained in such a manner so as to be able to obtain an accurate count when the wrap is completed. At the completion of the wrap, a count team member shall independently count the wrap and reconcile it with the weigh/meter count.

(12) If the coins are transported off the property, a second (alternative) count procedure shall be performed before the coins leave the property. Any variances shall be documented.

(13) Transfers out of the count room during the gaming machine count and wrap process shall be strictly prohibited, or if transfers are permitted during the count and wrap, each transfer shall be recorded on a separate multi-part form with a preprinted or concurrently-printed form number (used solely for gaming machine count transfers) which shall be subsequently reconciled by the accounting department to ensure the accuracy of the reconciled wrapped gaming machine drop. If transfers are permitted, they must be counted and signed for by at least two members of the count team and by someone independent of the count team who is responsible for authorizing the transfer.

(14) If the count room serves as a coin room and coin room inventory is not secured so as to preclude access by the count team, then the following two standards shall apply:

(i) At the commencement of the gaming machine count the following requirements shall be met:

(A) The coin room inventory shall be counted by at least two employees, one of whom is a member of the count team and the other is independent of the weigh/count and wrap procedures;

(B) The count in paragraph (f)(14)(i)(A) of this section shall be recorded on an appropriate inventory form;

(ii) Upon completion of the wrap of the gaming machine drop:

(A) At least two members of the count team (wrap team), independently from each other, shall count the ending coin room inventory;

(B) The counts in paragraph (f)(14)(ii)(A) of this section shall be recorded on a summary report(s) which evidences the calculation of the final wrap by subtracting the beginning inventory from the sum of the ending inventory and transfers in and out of the coin room;

(C) The same count team members shall compare the calculated wrap to the weigh/count, recording the comparison and noting any variances on the summary report;

(D) A member of the cage/vault department shall count the ending coin room inventory by denomination and shall reconcile it to the beginning inventory, wrap, transfers and weigh/count; and

(E) At the conclusion of the reconciliation, at least two count/wrap team members and the verifying employee shall sign the summary report(s) attesting to its accuracy.

(15) For Tier A and B gaming operations the functions described in paragraph (f)(14)(ii)(A) and (C) of this section may be performed by only one count team member. That count team member must then sign the summary report, along with the verifying employee, as required under paragraph (f)(14)(ii)(E).

(16) If the count room is segregated from the coin room, or if the coin room is used as a count room and the coin room inventory is secured to preclude access by the count team, all of the following requirements shall be completed, at the conclusion of the count:

(i) At least two members of the count/wrap team shall count the final wrapped gaming machine drop independently from each other;

(ii) The counts shall be recorded on a summary report;

(iii) The same count team members (or the accounting department) shall compare the final wrap to the weigh/count, recording the comparison and noting any variances on the summary report;

(iv) A member of the cage/vault department shall count the wrapped gaming machine drop by denomination and reconcile it to the weigh/count;

(v) At the conclusion of the reconciliation, at least two count team members and the cage/vault employee shall sign the summary report attesting to its accuracy; and

(vi) The wrapped coins (exclusive of proper transfers) shall be transported to the cage, vault or coin vault after the reconciliation of the weigh/count to the wrap.

(17) Large (by denomination, either $1,000 or 2% of the drop, whichever is less) or unusual (e.g., zero for weigh count or patterned for all counts) variances between the weigh/count and wrap shall be investigated by management personnel independent of the gaming machine department, count team and the cage/vault functions on a timely basis.

(18) The results of such investigation shall be documented and maintained.

(19) All gaming machine count and wrap documentation, including any applicable computer storage media, shall be immediately delivered to the accounting department by other than the cashier's department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(20) If applicable, the weight shall be converted to dollar amounts prior to the reconciliation of the weigh to the wrap.

(21) A count team member shall test the metered count machine (if used) prior to the actual count to ascertain if the metering device is functioning properly with a predetermined number of coins for each denomination.

(22) If a coin meter is used, a count team member shall convert the coin count for each denomination into dollars and shall enter the results on a summary sheet.

(23) Immediately upon receiving the funds, an independent person shall count the gaming machine drop by denomination and shall sign the count sheet attesting to the accuracy of the total and the denominations of the funds received.

(24) After the weigh/wrap count has been completed, the count/wrap amount shall be posted to cage accountability.

(25) Gaming machine analysis reports, which compare actual hold to theoretical hold by gaming machine shall be prepared on at least a monthly basis.

(26) Such reports shall provide all data on both month-to-date and year-to-date bases.

(27) The gaming machine hopper loads and coin in the drop cabinet shall be secured and accounted for during the removal and maintenance of gaming machines.

(28) Cashier/change banks shall be counted and reconciled for each shift.

(29) Corrections on gaming machine count documentation shall be made by crossing out the error, entering the correct figure, and then obtaining the initials of at least two count team employees. If a weigh scale interface is used, corrections to gaming machine count data shall be made using either of the following:

(i) Crossing out the error on the gaming machine document, entering the correct figure, and then obtaining the initials of at least two count team employees. If this procedure is used, an employee independent of the gaming machine department and count team shall enter the correct figure into the computer system prior to the generation of related gaming machine reports; or

(ii) During the count process, correct the error in the computer system and enter the passwords of at least two count team employees. If this procedure is used, an exception report shall be generated by the computer system identifying the gaming machine number, the error, the correction and the count team employees attesting to the correction.

(g) Currency acceptor drop and count standards. (1) Tier A gaming operations may be exempt from compliance with this section if the gaming operations develop and comply with procedures that shall protect the integrity of the drop and count.

(2) The currency acceptor drop boxes shall be removed by an employee independent of the gaming machine department then transported directly to the soft count room or other similarly restricted location and locked in a secure manner until the count takes place.

(3) The transporting of currency acceptor drop boxes shall be performed by a minimum of two employees at least one of whom is independent of the gaming machine department.

(4) The currency acceptor count shall be performed in a soft count room or equivalently secure area with comparable controls.

(5) The currency acceptor count shall be performed by a minimum of three employees.

(6) Currency acceptor count team members shall be rotated on a routine basis such that the count team is not consistently the same three individuals more than four days per week.

(7) For Tier B gaming operations a minimum of two persons may perform the count provided the count is viewed either live or on videotape within seven days by an employee independent of the count.

(8) The currency acceptor count team shall be independent of transactions being reviewed and counted and the subsequent accountability of currency drop proceeds.

(9) A cage cashier may be used if this person is not allowed to perform the recording function. An accounting representative may be used if there is an independent audit of all currency acceptor count documentation.

(10) The currency acceptor drop boxes shall be individually emptied and counted in such a manner as to prevent the commingling of funds between boxes until the count of the box has been recorded.

(11) The count of each box shall be recorded in ink or other permanent form of recordation.

(12) If currency counters are utilized and the count room table is used only to empty boxes and sort/stack contents, a count team member shall be able to witness the loading and unloading of all currency at the currency counter, including rejected currency.

(13) Drop boxes, when empty, shall be shown to another member of the count team, to another person who is observing the count, or to recorded or live surveillance, provided the count is monitored in its entirety by someone independent of the count.

(14) Corrections to information originally recorded by the count team on currency acceptor count documentation shall be made by crossing out the error, entering the correct figure, and then obtaining the initials of at least two count team members who verified the change.

(15) The count sheet shall be reconciled to the total drop by a count

team member who shall not function as the sole recorder.

(16) All members of the count team shall attest by signature to the accuracy of the currency acceptor drop count. Three verifying signatures on the count sheet shall be adequate if all additional count team employees sign a supplemental document evidencing their involvement in the count process.

(17) All monies that were counted shall be turned over to the cage cashier (who is independent of the count team) or to an employee independent of the revenue generation and the count process for verification.

(18) The employee shall certify by signature as to the accuracy of the currency delivered and received.

(19) Access to stored full drop boxes shall be restricted to authorized members of the drop and count teams.

(20) Access to the count room shall be restricted to members of the drop and count teams, excluding authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(21) The count sheet, with all supporting documents, shall be promptly delivered to the accounting department by a count team member or someone other than the cashiers department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(h) Jackpot payouts, gaming machines fills, short pays and accumulated credit payouts standards.

(1) For jackpot payouts and gaming machine fills, documentation shall include the following information:

(i) Date and time;

(ii) Machine number;

(iii) Dollar amount of cash payout or gaming machine fill (both alpha and numeric), or description of personal property awarded; alpha is optional if another unalterable method is used for evidencing the amount of the payout;

(iv) Game outcome (including reel symbols, card values and suits, etc.) for jackpot payouts;

(v) Signatures of at least two employees verifying and witnessing the payout or gaming machine fill; however, on graveyard shifts (eight-hour maximum) payouts/fills less than $100 can be made without the payout/fill being witnessed if the second person signing can reasonably verify that a payout/fill is justified; and

(vi) Preprinted or concurrently-printed sequential number.

(2) Jackpot payouts over a predetermined amount shall require the signature and verification of a supervisory or management employee independent of the gaming machine department. This predetermined amount shall be authorized by management, documented, and maintained.

(3) For short pays of $10.00 or more, the jackpot payout form includes:

(i) Date and time;

(ii) Machine number;

(iii) Dollar amount of payout (both alpha and numeric); and

(iv) Signatures of at least two employees verifying and witnessing the payout.

(4) Short pays involving a single token in a denomination higher than $10.00 may be handled without the documentation required in paragraph (h) (3) of this section.

(5) Computerized jackpot/fill systems shall be restricted so as to prevent unauthorized access and fraudulent payouts by one individual.

(6) Payout forms shall be controlled and routed in a manner that precludes any one individual from producing a fraudulent payout by forging signatures or by altering the amount paid out subsequent to the payout and misappropriating the funds.

(i) If a gaming operation offers promotional payouts and awards, the payout form/documentation includes the following information:

(1) Date and time;

(2) Machine number and denomination;

(3) Dollar amount of payout or description of personal property (e.g., jacket, toaster, car, etc.);

(4) Type of promotion (e.g., double jackpots, four-of-a-kind bonus, etc.); and

(5) Signature of at least one employee authorizing and completing the transaction.

(j) Gaming machine department funds standards.

(1) The gaming machine booths and change banks, which are active during the shift, shall be counted down and reconciled each shift utilizing appropriate accountability documentation.

(2) The wrapping of loose gaming machine booth and cage cashier coin shall be performed at a time or location that does not interfere with the hard count/wrap process or the accountability of that process.

(3) A record shall be maintained evidencing the transfers of wrapped and unwrapped coins and retained for 7 days.

(k) EPROM standards. (1) At least annually, procedures shall be performed to insure the integrity of a sample of gaming machine game program EPROMs by personnel independent of the gaming operation or the machines being tested.

(2) EPROM control standards.

(i) Procedures shall be developed and implemented for the following:

(A) Removal of EPROMs from devices, the verification of the existence of errors as applicable, and the correction via duplication from the master game program EPROM;

(B) Copying one gaming device program to another approved program;

(C) Verification of duplicated EPROMs prior to being offered for play;

(D) Destruction, as needed, of EPROMs with electrical failures; and

(E) Securing the EPROM duplicator and master game EPROMs from unrestricted access.

(ii) The master game program number, par percentage, and the pay table shall be verified to the par sheet when initially received from the manufacturer.

(iii) Gaming machines with potential jackpots in excess of $100,000 shall have the circuit boards locked or physically sealed. The lock or seal shall necessitate the presence of an individual independent of the gaming machine department to access the device game program EPROM. If a seal is used to secure the board to the frame of the gaming device, it shall be pre-numbered.

(iv) Records which document the procedures in paragraph (k) (2) (i) of this section shall include the following information:

(A) Date;

(B) Machine number (source and destination);

(C) Manufacturer;

(D) Program number;

(E) Personnel involved;

(F) Reason for duplication;

(G) Disposition of any permanently removed EPROM;

(H) Seal numbers, if applicable; and

(I) Approved testing lab approval numbers, if available.

(3) EPROMS returned to gaming devices shall be labeled and shall include the date program number, information identical to that shown on the manufacturer's label, and initials of the individual replacing the EPROM.

(l) Standards for evaluating theoretical and actual hold percentages.

(1) Accurate and current theoretical hold worksheets shall be maintained for each gaming machine.

(2) For those gaming machines or groups of identical machines (excluding multi-game machines) with differences in theoretical payback percentage exceeding a 4% spread between the minimum and maximum theoretical payback, an employee or department independent from the gaming machine department shall:

(i) On a quarterly basis, record the meters that contain the number of plays by wager (i.e., one coin, two coins, etc.);

(ii) On an annual basis, calculate the theoretical hold percentage based on the distribution of plays by wager type;

(iii) On an annual basis, adjust the machine(s) theoretical hold percentage in the gaming machine statistical report to reflect this revised percentage.

(3) For multi-game machines, an employee or department independent of the gaming machine department shall:

(i) Weekly record the total coin-in meter;

(ii) Quarterly record the coin-in meters for each game contained in the machine;

(iii) On an annual basis adjust the theoretical hold percentage to a weighted average based upon the ratio of coin-in for each game.

(4) The adjusted theoretical hold percentage for multi-game machines may be combined for machines with exactly the same game mix throughout the year.

(5) The theoretical hold percentages used in the slot analysis reports should be within the performance standards set by the manufacturer.

(6) Records shall be maintained for each machine which indicate the dates and type of changes made and the recalculation of theoretical hold as a result of the changes.

(7) Records shall be maintained for each machine which indicate the date the machine was placed into service, the date the machine was removed from operation, the date the machine was placed back into operation, and any changes in machine numbers and designations.

(8) All of the gaming machines shall contain functioning meters which shall record coin-in or credit-in.

(9) All gaming machines with currency acceptors shall contain functioning bill-in meters which record the dollar amounts or number of bills accepted by denomination.

(10) Gaming machine in-meter readings shall be recorded at least weekly (monthly for Tier A gaming operations) immediately prior to or subsequent to a gaming machine drop. However, the time between readings may extend beyond one week in order for a reading to coincide with the end of an accounting period only if such extension is for no longer than six days. In-meter readings should be retained for at least five years.

(11) The employee who records the in-meter reading shall either be independent of the hard count team or shall be assigned on a rotating basis, unless the in-meter readings are randomly verified quarterly for all gaming machines and currency acceptors by someone other than the regular in-meter reader.

(12) Upon receipt of the meter reading summary, the accounting department shall review all meter readings for reasonableness using pre-established parameters.

(13) Prior to final preparation of statistical reports, meter readings which do not appear reasonable shall be reviewed with gaming machine department employees, and exceptions documented, so that meters can be repaired or clerical errors in the recording of meter readings can be corrected.

(14) A report shall be produced at least monthly showing month-to-date, year-to-date, and if practicable, life-to-date actual hold percentage computations for individual machines and a comparison to each machine's theoretical hold percentage previously discussed.

(15) Each change to a gaming machine's theoretical hold percentage, including progressive percentage contributions, shall result in that machine being treated as a new machine in the statistical reports (i.e., not commingling various hold percentages).

(16) If promotional payouts and awards are included on the gaming machine statistical reports, it shall be in a manner which prevents distorting the actual hold percentages of the affected machines.

(17) A report shall be produced at least monthly showing year-to-date combined gaming machine performance, by denomination. The report shall include the following for each denomination:

(i) Floor par;

(ii) Combined actual hold percentage;

(iii) Percentage variance; and

(iv) Projected dollar variance (i.e., coin-in times the percentage variance).

(18) The statistical reports shall be reviewed by both gaming machine department management and management employees independent of the gaming machine department on at least a monthly basis.

(19) Large variances between theoretical hold and actual hold shall be investigated and resolved with the findings documented in a timely manner.

(20) For purposes of analyzing large variances between actual hold and theoretical hold percentages, information to create floor par reports by machine type shall be maintained.

(21) Maintenance of the computerized gaming machine monitoring system data files shall be performed by a department independent of the gaming machine department. Alternatively, maintenance may be performed by gaming machine supervisory employees if sufficient documentation is generated and it is randomly verified on a monthly basis by employees independent of the gaming machine department.

(22) Updates to the computerized gaming machine monitoring system to reflect additions, deletions, or movements of gaming machines shall be made at least weekly prior to in-meter readings and the weigh process.

(m) Gaming machine hopper contents standards.

(1) When machines are temporarily removed from the floor, gaming machine drop and hopper contents shall be protected to preclude the misappropriation of stored funds.

(2) When machines are permanently removed from the floor, the gaming machine drop and hopper contents shall be counted and recorded by at least two employees with appropriate documentation being routed to the accounting department for proper recording and accounting for initial hopper loads.

(n) Gaming machine drop keys standards.

(1) The physical custody of the keys needed to access gaming machine coin drop cabinets, including duplicates, shall require the involvement of two persons, one of whom is independent of the gaming machine department.

(2) Gaming machine coin drop cabinet keys, including duplicates, shall be maintained by a department independent of the gaming machine department.

(3) Two employees (separate from key custodian) shall be required to accompany such keys while checked out and observe each time gaming machine drop cabinets are accessed, unless surveillance is notified each time keys are checked out and surveillance observes the person throughout the period the keys are checked out.

(o) Currency acceptor key control standards. (1) Tier A gaming operations shall not be subject to the requirements of this paragraph (o), provided that the gaming operation develops and complies with procedures that maintain adequate key control and restricts access to the keys.

(2) The physical custody of the keys needed for accessing stored full currency acceptor drop box contents shall require involvement of persons from two separate departments, with the exception of the count team.

(3) Only the employees authorized to remove the currency acceptor drop boxes shall be allowed access to the

release keys. For situations that require access to the currency acceptor drop box at other than scheduled drop time, the date, time, and signature of employee signing out/in the release key must be documented. The currency acceptor drop box release keys are separately keyed from the currency acceptor contents keys.

(4) The count team members may have access to the release keys during the count only in order to reset the drop boxes if necessary.

(5) Employees authorized to drop the currency acceptor drop boxes shall be precluded from having access to drop box contents keys.

(6) Someone independent of the gaming machine department shall be required to accompany currency acceptor drop box storage rack keys and observe each time drop boxes are removed from or placed in storage racks.

(7) Employees authorized to obtain drop box storage rack keys shall be precluded from having access to drop box contents keys (with the exception of the count team).

(8) Access to the currency acceptor contents key at other than scheduled count times shall require the involvement of at least three employees from separate departments, including management. The reason for access shall be documented with the signatures of all participants and observers. Only the count team members shall be allowed access to drop box contents.

(9) At least three count team members shall be required to be present at the time currency acceptor count room keys and other count keys are issued for the count.

(10) Duplicate keys shall be maintained in such a manner as to provide the same degree of control over drop boxes as is required for the original keys. Records shall be maintained for each key duplicated which indicate the number of keys made and destroyed.

(p) Player tracking standards. (1) The player tracking system shall be secured so as to prevent unauthorized access (e.g., changing passwords at least quarterly and physical access to computer hardware, etc.).

(2) The addition of points to members' accounts other than through actual gaming machine play shall be sufficiently documented (including substantiation of reasons for increases) and shall be authorized by a department independent of the player tracking and gaming machines. Alternatively, addition of points to members' accounts may be authorized by gaming machine supervisory employees if sufficient documentation is generated and it is randomly verified by employees independent of the gaming machine department on a quarterly basis.

(3) Booth employees who redeem points for members shall not have access to lost cards.

(4) Changes to the player tracking system parameters, such as point structures and employee access, shall be performed by supervisory employees independent of the gaming machine department. Alternatively, changes to player tracking system parameters may be performed by gaming machine supervisory employees if sufficient documentation is generated and it is randomly verified by supervisory employees independent of the gaming machine department on a monthly basis.

(5) All other changes to the player tracking system shall be appropriately documented.

(q) Progressive gaming machines standards. (1) A meter that shows the amount of the progressive jackpot shall be conspicuously displayed at or near the machines to which the jackpot applies. This standard does not apply to wide area progressive machines.

(i) At least once each day, each gaming operation shall record the amount shown on each progressive jackpot meter at the licensee's establishment except for those jackpots that can be paid directly from the machine's hopper;

(ii) Explanations for meter reading decreases shall be maintained with the progressive meter reading sheets, and where the payment of a jackpot is the explanation for a decrease, the gaming operation shall record the jackpot payout number on the sheet or have the number reasonably available; and

(iii) Each gaming operation shall record the base amount of each progressive jackpot the licensee offers.

(2) The wide area progressive gaming machines system shall be adequately restricted to prevent unauthorized access (e.g., changing passwords at least quarterly, restrict access to EPROMs, and restrict physical access to computer hardware, etc.).

(3) For the wide area progressive system, procedures shall be developed, implemented, and documented for:

(i) Reconciliation of meters and jackpot payouts;

(ii) Collection/drop of gaming machine funds;

(iii) Jackpot verification and payment and billing to gaming operations on pro-rata basis;

(iv) System maintenance;

(v) System accuracy; and

(vi) System security.

(4) Reports adequately documenting the procedures required in paragraph (q)(3) of this section shall be generated and retained.

(r) Gaming machine accounting/auditing procedures standards. (1) Gaming machine accounting/auditing procedures shall be performed by employees who are independent of the transactions being reviewed.

(2) For computerized player tracking systems, an accounting/auditing employee shall perform the following procedures at least one day per month:

(i) Foot all jackpot and fill slips and trace totals to those produced by the system;

(ii) Review all slips written (from the restricted copy) for continuous sequencing;

(iii) Foot all points-redeemed documentation and trace to the system-generated totals; and

(iv) Review all points-redeemed documentation for propriety.

(3) For computerized gaming machine monitoring systems, procedures shall be performed at least monthly to verify that the system is transmitting and receiving data from the gaming machines properly and to verify the continuing accuracy of the coin-in meter readings as recorded in the gaming machine statistical report.

(4) For weigh scale interface systems, for at least one drop period per month accounting/auditing employees shall compare the weigh tape to the system-generated weigh, as recorded in the gaming machine statistical report, in total. Discrepancies shall be resolved prior to generation/distribution of gaming machine reports.

(5) For each drop period, accounting/auditing personnel shall compare the ''coin-to-drop'' meter reading to the actual drop amount. Discrepancies should be resolved prior to generation/distribution of slot statistical reports.

(6) Follow-up shall be performed for any one machine having an unresolved variance between actual drop and coin-to-drop meter reading in excess of 3%. The follow-up performed and results of the investigation shall be documented and maintained.

(7) At least weekly, accounting/auditing employees shall compare the bill-in meter reading to the total currency acceptor drop amount for the week. Discrepancies shall be resolved prior to the generation/distribution of gaming machine statistical reports.

(8) Follow-up shall be performed for any one machine having an unresolved variance between actual drop and bill-in meter reading in excess of 3%. The follow-up performed and results of the investigation shall be documented and maintained.

(9) At least annually, accounting/auditing personnel shall randomly

verify that EPROM changes are properly reflected in the gaming machine analysis reports.

(10) Accounting/auditing employees shall review exception reports for all computerized gaming machine systems on a daily basis for propriety of transactions and unusual occurrences.

(11) All gaming machine auditing procedures and any follow-up performed shall be documented and maintained for inspection.

(s) For all computerized gaming machine systems, a personnel access listing shall be maintained which includes at a minimum:

(1) Employee name;

(2) Employee identification number (or equivalent); and

(3) Listing of functions employee can perform or equivalent means of identifying same.

(t) For any computer applications utilized, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

(u) For gaming machines that accept coins or currency and issue cash-out tickets, the following standards shall apply:

(1) In addition to the applicable accounting and auditing standards in paragraph (r) of this section, on a quarterly basis, the gaming operation shall foot all jackpot cash-out tickets and trace totals to those produced by the system.

(2) The customer may request a cash-out ticket from the gaming machine which reflects all remaining credits. The cash-out ticket shall be printed at the gaming machine by an internal document printer.

(3) The customer shall redeem the cash-out ticket at a change booth or cashiers' cage. Once presented for redemption, the cashier shall:

(i) Scan the bar code via an optical reader or its equivalent; or

(ii) Input the cash-out ticket validation number into the computer.

(4) The information contained in paragraph (u)(3) of this section shall be transmitted to the host computer. The host computer shall verify the authenticity of the cash-out ticket and communicate directly to the change booth or cashier cage terminal.

(5) If valid, the cashier pays the customer the appropriate amount and the cash-out ticket is electronically noted ''paid'' in the system. The ''paid'' cash-out ticket shall remain in the cashiers'' bank for reconciliation purposes.

(6) If invalid, the host computer shall notify the cashier that one of the following conditions exists:

(i) Serial number cannot be found on file (stale date, forgery, etc.);

(ii) Cash-out ticket has already been paid; or

(iii) Amount of cash-out ticket differs from amount on file. The cashier shall refuse payment to the customer and notify a supervisor of the invalid condition. The supervisor shall resolve the dispute.

(7) If the coinless/cashless gaming machine system temporarily goes down, cashiers may redeem cash-out tickets after recording the following:

(i) Serial number of the cash-out ticket;

(ii) Date;

(iii) Dollar amount; and

(iv) Issuing gaming machine number.

(8) Cash-out tickets shall be validated as expeditiously as possible when the coinless/cashless gaming machine system is restored.

(9) The gaming operation shall develop and implement procedures to control cash-out ticket paper which shall include procedures which:

(i) Mitigate the risk of counterfeiting of cash-out ticket paper;

(ii) Adequately controls the inventory of the cash-out ticket paper; and

(iii) Provide for the destruction of all unused cash-out ticket paper.

(10) If the coinless/cashless gaming machine system is down for more than four hours, the gaming operation shall promptly notify the tribal council or its designated representative.

(11) These gaming machine systems shall comply with all other standards (as applicable) in this section including:

(i) Standards for currency acceptor drop and count;

(ii) Standards for coin drop and count; and

(iii) Standards concerning EPROMS.

(v) If the gaming machine does not accept currency or coin and does not return currency or coin, the following standard shall apply:

(1) Equipment. (i) A central computer, with supporting hardware and software, to coordinate network activities, provide system interface, and store and manage a player/account database;

(ii) A network of contiguous player terminals with touch-screen or button-controlled video monitors connected to an electronic selection device and the central computer via a communications network;

(iii) One or more electronic selection devices, utilizing random number generators, each of which selects any combination or combinations of numbers, colors and/or symbols for a network of player terminals.

(2) Player terminals standards. (i) The player terminals are connected to a game server;

(ii) The game server shall generate and transmit to the bank of player terminals a set of random numbers, colors and/or symbols at regular intervals. The subsequent game results are determined at the player terminal and the resulting information is transmitted to the account server;

(iii) The game servers shall be housed in a game server room or secure locked cabinet off the casino floor.

(3) Patron account maintenance standards. (i) A central computer acting as an account server shall provide customer account maintenance and the deposit/withdrawal function of those account balances;

(ii) Patrons may access their accounts on the computer system by means of a Player Identification Card at the player terminal. Each player terminal may be equipped with a card reader and PIN (personal identification number) pad or touch screen array for this purpose;

(iii) All communications between the player terminal and the account server shall be encrypted for security reasons.

(4) Patron account generation standards. (i) A computer file for each patron shall be prepared by a clerk, with no incompatible functions, prior to the patron being issued a PIN card to be utilized for machine play. The patron shall select his/her four digit PIN, known only to the patron, to be used in conjunction with the PIN Card;

(ii) The clerk shall sign-on with a unique password to a terminal equipped with peripherals required to input data from the Patron Registration form. Passwords are issued and can only be changed by MIS personnel at the discretion of the department director;

(iii) After entering a specified number of incorrect PIN entries at the cage or player terminal, the patron shall be directed to proceed to the Gaming Machine Information Center to obtain a new PIN. If a patron forgets, misplaces or requests a change to their four digit PIN, the patron shall proceed to the Gaming Machine Information Center.

(5) Deposit of credits standards. (i) The cashier shall sign-on with a unique password to a cashier terminal equipped with peripherals required to complete the credit transactions. Passwords are issued and can only be changed by MIS personnel at the discretion of the department director;

(ii) The patron shall present cash, chips, coin or coupons along with their PIN Card to a cashier to deposit credits;

(iii) The cashier shall complete the transaction by utilizing a card scanner which the cashier shall slide the patron's PIN card through;

(iv) The cashier shall accept the funds from the patron and enter the

appropriate amount on the cashier terminal;

(v) A multi-part deposit slip shall be generated by the point of sale receipt printer. The cashier shall direct the patron to sign two copies of the deposit slip receipt. The original of the signed deposit slip shall be given to the patron. The first copy of the signed deposit slip shall be secured in the cashier's cash drawer;

(vi) The cashier shall verify the patron's balance before completing the transaction. The cashier shall secure the funds in their cash drawer and return the PIN card to the patron.

(6) Prize standards. (i) Winners at the gaming machines may receive cash, prizes redeemable for cash or merchandise, at the discretion of the gaming operation;

(ii) If merchandise prizes are to be awarded, the specific type of prize or prizes which may be won shall be disclosed to the player before the game begins;

(iii) The patron shall maintain his/her PIN Card for an indefinite period of time. Patrons shall not be required to redeem the balance in their account immediately or at the end of their gaming trip which creates a liability to the patron from the gaming operation.

(7) Payoff odds standards. (i) Payoff odds shall be determined by the gaming operation and approved by the tribe or tribal gaming commission;

(ii) The gaming operation shall submit the pay rate, pay tables, seed amounts (if applicable), machine entry procedures and authorizations, the attendant jackpot payout key control procedures, and machine entry key control procedures to the tribe or the tribe's independent regulatory body.

(8) The gaming operation shall determine the minimum and maximum wagers. The amounts of such wagers shall be conspicuously posted on a sign or displayed on a designated screen of the player terminal.

(9) Jackpot payout procedures. (i) When any progressive jackpot or a payout of $1,200.00 or more is won, the player terminal shall lock-up preventing further play.

(ii) The player terminal shall indicate by light and sound that a jackpot has been won.

(iii) An attendant shall go to the player terminal and obtain suitable identification such as a driver's license.

(iv) An attendant shall complete the machine payout form for all winning jackpots of $1,200.00 or more. The form shall include, at a minimum, the following information:

(A) Game number and type;

(B) Bank location;

(C) Account number of the player;

(D) Name of the player;

(E) Terminal number the jackpot was won at;

(F) Date, time, and shift;

(G) Amount won;

(H) Amount wagered;

(I) Signature and badge number of the attendant verifying surveillance was notified for jackpot winning of $5,000 or greater for a single game; and

(J) Signature and badge number of attendant attesting to reactivation of the terminal.

(v) The attendant shall reactivate the machine upon completion of the appropriate paperwork.

(10) The patron shall present their PIN Card to a cashier to withdraw their credits. The cashier shall perform the following:

(i) Scan the PIN Card;

(ii) Request the patron to enter their PIN;

(iii) The cashier shall ascertain the amount the patron wishes to withdraw and enter the amount into the computer;

(iv) A multi-part withdrawal slip shall be generated by the point of sale receipt printer. The cashier shall direct the patron to sign the original and one copy of the withdrawal slip;

(v) The cashier shall verify that the PIN card and the patron match by:

(A) Comparing the patron to image on the computer screen of patron's picture ID; or

(B) Comparing the patron signature on the withdrawal slip to signature on the computer screen.

(vi) The cashier shall verify the patron's balance before completing the transaction. The cashier shall pay the patron the appropriate amount, issue the patron the original withdrawal slip and return the PIN card to the patron;

(vii) The first copy of the withdrawal slip shall be placed in the cash drawer. All account transactions shall be accurately tracked by the account server computer system. The first copy of the withdrawal slip shall be forwarded to the accounting at the end of the gaming day;

(viii) In the event the imaging function is temporarily disabled, patrons shall be required to provide positive ID for cash withdrawal transactions at the cashier stations.

§ 542.13 What are the minimum internal control standards for cage and credit?

(a) The following standards shall apply if the gaming operation authorizes and extends credit to patrons:

(1) At least the following information shall be recorded for patrons who have credit limits or are issued credit (excluding personal checks, payroll checks, cashier's checks and traveler's checks):

(i) Patron's name, current address, and signature;

(ii) Identification verifications;

(iii) Authorized credit limit;

(iv) Documentation of authorization by an individual designated by management to approve credit limits; and

(v) Credit issuances and payments.

(2) Prior to extending credit, the patron's gaming operation credit record and/or other documentation shall be examined to determine the following:

(i) Properly authorized credit limit;

(ii) Whether remaining credit is sufficient to cover the credit issuance; and

(iii) Identity of the patron (except for known patrons).

(3) Credit extensions over a specified dollar amount shall be approved by personnel designated by management.

(4) Proper approval of credit extensions over 10 percent of the previously established limit shall be documented.

(5) The job functions of credit approval (i.e., establishing the patron's credit worthiness) and credit extension (i.e., advancing patron's credit) shall be segregated for credit extensions to a single patron of $10,000 or more per day (applies whether the credit is extended in the pit or the cage).

(6) If cage credit is extended to a single patron in an amount exceeding $2,500, applicable gaming personnel shall be notified on a timely basis of the patrons playing on cage credit, the applicable amount of credit issued, and the available balance.

(7) Cage marker forms shall be at least two parts (the original marker and a payment slip), prenumbered by the printer or concurrently numbered by the computerized system, and utilized in numerical sequence.

(8) The completed original cage marker shall contain at least the following information: marker number, player's name and signature, and amount of credit issued (both alpha and numeric).

(9) The completed payment slip shall include the same marker number as the original, date and time of payment, amount of payment, nature of settlement (cash, chips, etc.), and signature of cashier receiving the payment.

(10) If personal checks, cashier's checks, or payroll checks are cashed the Tribe shall implement appropriate controls for purpose of security and integrity. The Tribe shall establish and comply with procedures for collecting and recording checks returned to the gaming operation after deposit which

include re-deposit procedures. These procedures shall provide for notification of cage/credit departments and custodianship of returned checks.

(11) Counter checks shall comply with the requirements of paragraph (a)(10) of this section.

(12) When counter checks are issued, the following shall be included on the check:

(i) The patron's name and signature;

(ii) The dollar amount of the counter check (both alpha and numeric);

(iii) Date of issuance; and

(iv) Signature or initials of the individual approving the counter check transaction.

(13) When travelers checks or other guaranteed drafts such as cashier's checks are presented, the cashier shall comply with the examination and documentation procedures as required by the Tribe.

(b) Payment standards. (1) All payments received on outstanding credit instruments shall be permanently recorded in the gaming operation's records.

(2) When partial payments are made on credit instruments, they shall be evidenced by a multi-part receipt (or another equivalent document) which contains:

(i) The same preprinted number on all copies;

(ii) Patron's name;

(iii) Date of payment;

(iv) Dollar amount of payment (or remaining balance if a new marker is issued), and nature of settlement (cash, chips, etc.);

(v) Signature of employee receiving payment; and

(vi) Number of credit instrument on which partial payment is being made.

(3) Unless account balances are routinely confirmed on a random basis by the accounting or internal audit departments, or statements are mailed by someone independent of the credit transactions and collections thereon, and the department receiving payments cannot access cash, then the following standards shall apply:

(i) The routing procedures for payments by mail require that they are received by a department independent of credit instrument custody and collection;

(ii) Such receipts by mail shall be documented on a listing indicating the customer's name, amount of payment, nature of payment (if other than a check), and date payment received;

(iii) The total amount of the listing of mail receipts shall be reconciled with the total mail receipts recorded on the appropriate accountability by the accounting department on a random basis (for at least three days per month).

(c) Access to credit documentation shall be restricted as follows:

(1) The credit information shall be restricted to those positions which require access and are so authorized by management;

(2) Outstanding credit instruments shall be restricted to persons authorized by management; and

(3) Written-off credit instruments shall be further restricted to individuals specified by management.

(d) Documentation shall be maintained as follows:

(1) All extensions of cage credit, pit credit transferred to the cage and subsequent payments shall be documented on a credit instrument control form.

(2) Records of all correspondence, transfers to and from outside agencies, and other documents related to issued credit instruments shall be maintained.

(e) Write-off and settlement standards. (1) Written-off or settled credit instruments shall be authorized in writing.

(2) Such authorizations shall be made by at least two management officials, who are from departments independent of the credit transaction.

(f) The use of collection agencies shall be governed by the following standards:

(1) If credit instruments are transferred to collection agencies, or other collection representatives, a copy of the credit instrument and a receipt from the collection representative shall be obtained and maintained until such time as the original credit instrument is returned or payment is received.

(2) An individual independent of credit transactions and collections shall periodically review the documents in paragraph (f)(1) of this section.

(g) If a gaming operation permits a customer to deposit funds with the gaming operation.

(1) The receipt or withdrawal of a customer deposit shall be evidenced by at least a two-part document with one copy going to the customer and one copy remaining in the cage file.

(2) The multi-part receipt shall contain the following information;

(i) Same receipt number on all copies;

(ii) Customer's name and signature;

(iii) Date of receipt and withdrawal;

(iv) Dollar amount of deposit/withdrawal; and

(v) Nature of deposit (cash, check, chips); however,

(vi) Provided all of the information in paragraph (g)(2)(i) through (v) is available, the only required information for all copies of the receipt is the receipt number.

(3) The gaming operation shall establish and comply with procedures which:

(i) Maintain a detailed record by patron name and date of all funds on deposit;

(ii) Maintain a current balance of all customer cash deposits which are in the cage/vault inventory or accountability; and

(iii) Reconcile this current balance with the deposits and withdrawals at least daily.

(4) The gaming operation shall describe the sequence of the required signatures attesting to the accuracy of the information contained on the customer deposit or withdrawal form ensuring that the form is signed by the cashier.

(5) All customer deposits and withdrawal transactions at the cage shall be recorded on a cage accountability form on a per-shift basis.

(6) Only cash, cash equivalents, chips and tokens shall be accepted from customers for the purpose of a customer deposit.

(7) The Tribe shall establish and comply with procedures which verify the patron's identity including photo identification.

(8) A file for patrons shall be prepared prior to acceptance of a deposit.

(h) Cage and vault accountability standards. (1) All transactions that flow through the cage shall be summarized on a cage accountability form on a per shift basis.

(2) Increases and decreases to the cage inventory shall be supported by documentation.

(3) The cage and vault (including coin rooms) inventories shall be counted by the oncoming and outgoing cashiers. These employees shall make individual counts for comparison of accuracy and maintenance of individual accountability which shall be recorded at the end of each shift during which activity took place. All discrepancies shall be noted and investigated.

(4) All net changes in outstanding gaming operation accounts receivables, including all returned checks, shall be summarized on a cage accountability form or similar document on a per shift basis.

(5) The gaming operation cash-on hand shall include, but is not limited to, the following components:

(i) Currency and coins;

(ii) House chips, including reserve chips;

(iii) Personal checks, cashier's checks and traveler's checks for deposit;

(iv) Customer deposits;

(v) Chips on tables;

(vi) Hopper loads (coins put into machines when they are placed in service); and

(vii) Fills and credits (these documents shall be treated as assets and

liabilities, respectively, of the cage during a business day. When win or loss is recorded at the end of the business day, they are removed from the accountability).

(6) The Tribe shall establish a minimum bankroll formula to ensure the gaming operation maintains cash or cash equivalents (on hand and in the bank, if readily accessible) in an amount sufficient to satisfy obligations to the gaming operation's patrons as they are incurred.

(i) The Tribe shall establish and comply with procedures for the receipt, inventory, storage, and destruction of gaming chips and tokens.

(j) Any program for exchanges of coupons for chips and/or tokens or other coupon program shall be approved by the Tribe prior to implementation; if approved, the Tribe shall establish and comply with procedures that account for and control of such programs.

(k) A gaming operation shall comply with the following accounting standards:

(1) The cage accountability shall be reconciled to the general ledger at least monthly.

(2) A trial balance of gaming operation accounts receivable, including the name of the patron and current balance, shall be prepared at least monthly for active, inactive, settled or written-off accounts. The reconciliation and any follow-up performed shall be documented and retained.

(3) The trial balance of gaming operation accounts receivable shall be reconciled to the general ledger each month. The reconciliation and any follow-up performed shall be documented and retained.

(4) A trial balance of the gaming operation's inactive or written-off accounts receivable, including the name of patron and balance, shall be prepared at least quarterly.

(5) On a monthly basis an evaluation of the collection percentage of credit issued to identify unusual trends shall be performed.

(6) All cage and credit accounting procedures and any follow-up performed shall be documented.

(l) An individual independent of the cage, credit, and collection functions shall perform all of the following at least three times per year:

(1) Ascertain compliance with credit limits and other established credit issuance procedures;

(2) Randomly reconcile outstanding balances of both active and inactive accounts on the accounts receivable listing to individual credit records and physical instruments;

(3) Examine credit records to determine that appropriate collection efforts are being made and payments are being properly recorded; and

(4) For a minimum of five (5) days per month, partial payment receipts shall be subsequently reconciled to the total payments recorded by the cage for the day and shall be numerically accounted for.

(m) Computer applications utilized, alternate documentation, and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

§ 542.14 What are the minimum internal control standards for internal audit?

(a) Separate internal audit personnel shall be maintained by a Tribe for its gaming operation(s).

(1) Tier C gaming operations shall maintain a separate internal audit department whose primary function is performing internal audit work and which is independent with respect to the departments subject to audit.

(2) Tier A and B gaming operations shall either maintain a separate internal audit department or designate personnel to perform internal audit work who are independent with respect to the departments/procedures being examined.

(3) The internal audit personnel shall report directly to the Tribe, the tribal gaming commission, audit committee or other entity designated by the tribe.

(b) Documentation (e.g., checklists, programs, reports, etc.) shall be prepared to evidence all internal audit work performed as it relates to the requirements in this section. The internal audit department operates with audit programs which, at a minimum, address the MICS. Additionally, the department properly documents the work performed, the conclusions reached, and the resolution of all exceptions.

(c) All material exceptions resulting from internal audit work shall be investigated and resolved with the results of such being documented and retained for five years.

(d) The internal audit department shall report to management and the Tribe or its designated tribal governmental body all instances of non-compliance that come to its attention during the course of testing compliance with the standards in this part. Management shall be required to respond to internal audit findings stating corrective measures to be taken to avoid recurrence of the audit exception. Such management responses shall be included in the internal audit report which will be delivered to the Tribe or its designated tribal governmental body.

(e) The internal audit department shall perform audits of all major areas of the gaming operation.

(1) The following are reviewed at least once during each six-month period:

(i) Table games, including but not limited to, fill and credit procedures, pit credit play procedures, rim credit procedures, soft drop/count procedures and the subsequent transfer of funds, surprise testing of count room currency counters, location and control over sensitive keys, the tracing of source documents to summarized documentation and accounting records, and reconciliation to restricted copies;

(ii) Gaming machines, including but not limited to, jackpot payout and slot fill procedures, slot drop/count and currency acceptor drop/count and subsequent transfer of funds, surprise testing of weigh scale and weigh scale interface, surprise testing of count room currency counters, slot machine drop cabinet access, tracing of source documents to summarized documentation and accounting records, reconciliation to restricted copies, location and control over sensitive keys, compliance with EPROM duplication procedures, and compliance with MICS procedures for gaming machines that accept coins or currency and issue cash-out tickets or gaming machines that do not accept currency or coin and do not return currency or coin.

(2) The following are reviewed at least annually:

(i) Keno, including but not limited to, game write and payout procedures, sensitive key location and control, and a review of keno auditing procedures;

(ii) Card games, including but not limited to, card games operation, monetary exchange procedures, shill transactions, and count procedures;

(iii) Bingo, including but not limited to, bingo card control, payout procedures, and cash reconciliation process;

(iv) Complimentary service or item, including but not limited to, procedures whereby complimentary service items are issued and authorized;

(v) Cage and credit procedures including all cage, credit and collection procedures, and the reconciliation of trial balances to physical instruments on a sample basis. Cage accountability shall be reconciled to the general ledger;

(vi) Pari-mutual wagering, including write and payout procedures, and pari-mutual auditing procedures;

(vii) Electronic data processing functions, including review for compliance with EDP standards.

(3) In addition to the observation and examinations performed under paragraphs (e) (1) and (2) of this section, follow-up observations and examinations shall be performed to verify that corrective action has been taken regarding all instances of noncompliance cited by internal audit, the independent accountant, and/or the Commission. The verification shall be performed within six months following the date of notification.

(4) Whenever possible, internal audit observations shall be performed on an unannounced basis (i.e., without the employees being forewarned that their activities will be observed). Additionally, if the independent accountant also performs the internal audit function, the accountant shall perform separate observations of the table games/gaming machine drops and counts to satisfy the internal audit observation requirements and independent accountant tests of controls as required by the AICPA Guide.

(f) Reports documenting audits performed shall be maintained and made available to the Commission upon request. The audit reports shall include the following information:

(1) Audit objectives;

(2) Audit procedures and scope;

(3) Findings and conclusions;

(4) Recommendations, if applicable; and

(5) Management's response.

§ 542.15 What are the minimum internal control standards for surveillance?

(a) The surveillance system shall be maintained and operated from a surveillance room and shall provide surveillance over gaming areas. Tier A gaming operations shall not be required to have a surveillance room if the gaming operation maintains and operates an unmanned surveillance system in a secured location whereby the areas under surveillance are continually video taped.

(b) The entrance to the surveillance room or secured location shall be located so that it is not readily accessible by either gaming operation employees who work primarily on the casino floor, or the general public.

(c) Access to a surveillance room shall be limited to surveillance personnel, key employees and other persons authorized in accordance with the gaming operation policy. Authorized surveillance personnel shall maintain sign-in logs of authorized persons entering the surveillance room.

(d) Surveillance room equipment shall have total override capability over all other satellite surveillance equipment located outside the surveillance room.

(e) For all Tier B and C gaming operations, in the event of power loss to the surveillance system, an auxiliary or backup power source shall be available and capable of providing immediate restoration of power to all elements of the surveillance system that enable surveillance personnel to observe the table games remaining open for play and all areas covered by dedicated cameras.

(f) The surveillance system shall include date and time generators which possess the capability to display the date and time of recorded events on video tape recordings. The displayed date and time shall not significantly obstruct the recorded view.

(g) The surveillance room shall be staffed for all shifts and activities by personnel trained in the use of the equipment, knowledge of the games and house rules.

(h) Each video camera required by the standards in this section shall be installed in a manner that will prevent it from being readily obstructed, tampered with or disabled by patrons or employees.

(i) Each video camera required by the standards in this section shall possess the capability of having its picture displayed on a video monitor and recorded. The surveillance system shall include sufficient numbers of monitors and recorders to simultaneously display and record multiple gaming and count room activities, and record the views of all dedicated cameras and motion activated dedicated cameras.

(j) Reasonable effort shall be made to repair each malfunction of surveillance system equipment required by the standards in this section within seventy-two (72) hours after the malfunction is discovered.

(k) In the event of a dedicated camera malfunction, the gaming operation shall immediately provide alternative camera coverage or other security measures, such as additional supervisory or security personnel, to protect the subject activity.

(l) Each gaming machine offering a payout of more than $250,000 shall be monitored by dedicated camera(s) to provide coverage of:

(1) All patrons and employees at the gaming machine, and

(2) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine:

(m) Notwithstanding paragraph (l) of this section, if the gaming machine is a multi-game machine, the gaming operation with the approval of the Tribe may develop and implement alternative procedures to verify payouts.

(n) The surveillance system of all Tier B and C gaming operations shall monitor and record a general overview of the activities occurring in each gaming machine change booth.

(o) The surveillance system of gaming operations operating four (4) or more table games shall provide at a minimum one (1) pan-tilt-zoom camera per two tables and surveillance must be capable of taping:

(1) With sufficient clarity to identify patrons and dealers; and

(2) With sufficient coverage and clarity to simultaneously view the table bank and determine the configuration of wagers, card values and game outcome.

(p) The surveillance system of gaming operations operating three (3) or less table games shall:

(1) Comply with the requirements of paragraph (n) of this section; or

(2) Have one (1) overhead camera at each table.

(q) All craps tables shall have two (2) stationary cross view cameras covering both ends of the table. All roulette areas shall have one (1) overhead stationary camera covering the roulette wheel and shall also have one (1) stationary overview of the play of the table. All big wheel games shall have one (1) stationary camera viewing the wheel.

(r) Each progressive table game with a potential progressive jackpot of $25,000 or more shall be recorded and monitored by dedicated cameras that provide coverage of:

(1) The table surface, sufficient that the card values and card suits can be clearly identified;

(2) An overall view of the entire table with sufficient clarity to identify patrons and dealer; and

(3) A view of the progressive meter jackpot amount. If several tables are linked to the same progressive jackpot meter, only one meter need be recorded.

(s) The surveillance system shall possess the capability to monitor the keno and bingo ball drawing device or random number generator which shall be recorded during the course of the draw by a dedicated camera or automatically activated camera with sufficient clarity to identify the balls drawn or numbers selected.

(t) The surveillance system shall monitor and record general activities in each keno game area with sufficient clarity to identify the employees performing the different functions.

(u) The surveillance system in the bingo game area shall monitor and record the game board and the activities of the employees responsible for drawing, calling, and entering the balls drawn or numbers selected.

(v) The surveillance system shall monitor and record general activities in each race book, sports pool and pari-mutuel book ticket writer and cashier area with sufficient clarity to identify the employees performing the different functions.

(w) The surveillance system shall monitor and record a general overview of activities occurring in each cage and vault area with sufficient clarity to identify employees within the cage and patrons and employees at the counter areas. Each cashier station shall be equipped with one (1) stationary overhead camera covering the transaction area. The surveillance system shall be used as an overview for cash transactions. This overview should include the customer, the employee and the surrounding area. This standard is optional for Tier A gaming operations.

(x) The cage or vault area in which fills and credits are transacted shall be monitored and recorded by a dedicated camera or motion activated dedicated camera that provides coverage with sufficient clarity to identify the chip values and the amounts on the fill and credit slips. Controls provided by a computerized fill and credit system may be deemed an adequate alternative to viewing the fill and credit slips.

(y) The surveillance system shall monitor and record all areas where currency or coin may be stored or counted, including the soft and hard count rooms, all doors to the soft and hard count rooms, all scales and wrapping machines and all areas where uncounted currency and coin may be stored during the drop and count process. Tier C gaming operations shall also maintain audio capability of the soft count room. The surveillance system shall provide for:

(1) Coverage of scales shall be sufficiently clear to view any attempted manipulation of the recorded data.

(2) Monitoring and recording of the table games drop box storage rack or area by either a dedicated camera or a motion-detector activated camera.

(3) Monitoring and recording of all areas where coin may be stored or counted including the hard count room, all doors to the hard count room, all scales and wrapping machines, and all areas where uncounted coin may be stored during the drop and count process.

(4) Monitoring and recording of soft count room, including all doors to the room all drop boxes, safes, and counting surfaces, and all count team personnel. The counting surface area must be continuously monitored by a dedicated camera during the soft count.

(5) Monitoring and recording of all areas where currency is sorted, stacked, counted, verified, or stored during the soft count process.

(z) All video recordings of coverage provided by the dedicated cameras or motion-activated dedicated cameras required by the standards in this section shall be retained for a minimum of seven (7) days. Recordings involving suspected or confirmed gaming crimes, unlawful activity, or detentions and questioning by security personnel, must be retained for a minimum of thirty (30) days. Recordings of all linked systems (bingo, ball draws, gaming machines, etc.) shall be maintained for at least thirty (30) days.

(aa) Video recordings shall be provided to the Commission upon request.

(bb) A video library log shall be maintained to demonstrate the storage, identification, and retention standards required in this section have been complied with.

(cc) Each tribe shall maintain a log that documents each malfunction and repair of the surveillance system as defined in this section. The log shall state the time, date, and nature of each malfunction, the efforts expended to repair the malfunction, and the date of each effort, the reasons for any delays in repairing the malfunction, the date the malfunction is repaired, and where applicable, any alternative security measures that were taken.

(dd) Each gaming operation shall maintain a surveillance log of all surveillance activities in the surveillance room. The log shall be maintained by surveillance room personnel and shall be stored securely within the surveillance department. At a minimum, the following information shall be recorded in a surveillance log:

(1) Date and time each surveillance commenced;

(2) The name and license credential number of each person who initiates, performs, or supervises the surveillance;

(3) Reason for surveillance including the name, if known, alias, or description of each individual being monitored, and a brief description of the activity in which the person being monitored is engaging;

(4) The times at which each video or audio tape recording is commenced and terminated;

(5) The time at which each suspected criminal offense is observed along with a notation of the reading on the meter, counter, or device specified in paragraph (f) of this section that identifies the point on the video tape at which such offense was recorded;

(6) Time of termination of surveillance; and

(7) Summary of the results of the surveillance.

§ 542.16 What are the minimum internal control standards for electronic data processing?

(a) General controls for gaming hardware and software. (1) Management shall take an active role in making sure that physical and logical security measures are implemented, maintained, and adhered to by personnel to prevent unauthorized access which could cause errors or compromise data or processing integrity.

(i) Management shall ensure that all new gaming vendor hardware and software agreements/contracts will require the vendor to adhere to the tribal minimum internal control standards.

(ii) Physical security measures shall exist over computer, computer terminals and storage media to prevent unauthorized access and loss of integrity of data and processing.

(iii) Access to systems software and application programs shall be limited to authorized personnel.

(iv) Access to computer data shall be limited to authorized personnel.

(v) Access to computer communications facilities, or the computer system, and information transmissions shall be limited to authorized personnel.

(vi) Standards in paragraph (a)(1) of this section shall apply to each applicable department within the gaming operation.

(2) The main computers (i.e., hardware, software and data files) for each gaming application (e.g., keno, race and sports, gaming machines, etc.) shall be in a secured area with access restricted to authorized persons, including vendors.

(3) Access to computer operations shall be restricted to authorized personnel to reduce the risk of loss of integrity of data or processing.

(4) Incompatible duties shall be adequately segregated and monitored to prevent error in general EDP/MIS procedures to go undetected or fraud to be concealed.

(5) Non-EDP/MIS personnel shall be precluded from having unrestricted access to the secured computer areas.

(6) The computer systems, including application software, shall be secured through the use of passwords or other approved means where applicable. Management personnel or persons independent of the department being controlled shall assign and control access to system functions.

(7) Passwords shall be controlled as follows unless otherwise addressed in the standards in this section.

(i) Each user shall have their own individual password; and (ii) Passwords shall be changed at least quarterly with changes documented.

(8) Adequate backup and recovery procedures shall be in place which include:

(i) Frequent backup of data files;

(ii) Backup of all programs;

(iii) Secured off-site storage of all backup data files and programs, or other adequate protection; and

(iv) Recovery procedures which are tested at least annually with documentation of results.

(9) Adequate system documentation shall be maintained, including descriptions of hardware and software, operator manuals, etc.

(b) If a separate EDP department is maintained or if there are in-house developed systems, the following standards shall apply:

(1) The EDP department shall be independent of the gaming areas (e.g., cage, pit, count rooms, etc.). EDP/MIS procedures and controls should be documented and responsibilities communicated.

(2) EDP department personnel shall be precluded from unauthorized access to:

(i) Computers and terminals located in gaming areas;

(ii) Source documents; and

(iii) Live data files (not test data).

(3) EDP/MIS personnel shall be:

(i) Restricted from having an authorized access to cash or other liquid assets; and

(ii) From initiating general or subsidiary ledger entries.

(4) Program changes for in-house developed systems should be documented as follows:

(i) Requests for new programs or program changes shall be reviewed by the EDP supervisor. Approvals to begin work on the program shall be documented;

(ii) A written plan of implementation for new and modified programs shall be maintained and include, at a minimum, the date the program is to be placed into service, the nature of the change, a description of procedures required in order to bring the new or modified program into service (conversion or input of data, installation procedures, etc.), and an indication of who is to perform all such procedures;

(iii) Testing of new and modified programs shall be performed and documented prior to implementation; and

(iv) A record of the final program or program changes, including evidence of user acceptance, date in service, programmer, and reason for changes, shall be documented and maintained.

(5) Computer security logs, if generated by the system, shall be reviewed by EDP supervisory personnel for evidence of:

(i) Multiple attempts to log-on, or alternatively, the system shall deny user access after three attempts to log-on;

(ii) Unauthorized changes to live data files; and

(iii) Any other unusual transactions.

(iv) This paragraph shall not apply to personal computers.

(c) If remote dial-up to any associated equipment is allowed for software support, the gaming operation shall maintain an access log which includes:

(1) Name of employee authorizing modem access;

(2) Name of authorized programmer or manufacturer representative;

(3) Reason for modem access;

(4) Description of work performed; and

(5) Date, time, and duration of access.

(d) Documents may be scanned or directly stored to WORM (''Write Once Read Many'') optical disk with the following conditions:

(1) The optical disk shall contain the exact duplicate of the original document.

(2) All documents stored on optical disk shall be maintained with a detailed index containing the gaming operation department and date. This index shall be available upon request by the Commission.

(3) Upon request and adequate notice by the tribe or the Commission, hardware (terminal, printer, etc.) shall be made available in order to perform auditing procedures.

(4) Controls shall exist to ensure the accurate reproduction of records up to and including the printing of stored documents used for auditing purposes.

(5) If source documents and summary reports are stored on re-writeable optical disks, the disks may not be relied upon for the performance of any audit procedures and the original documents and summary reports shall be retained.

(6) The disks shall be retained for a minimum of five years.

(7) Original documents must be retained for a minimum of one year after they have been scanned to WORM disks.

§ 542.17 What are the minimum internal control standards for complimentary services or items?

(a) Each gaming operation shall establish and comply with procedures for the authorization and issuance of complimentary services and items including cash and noncash gifts. Such procedures shall include, but shall not be limited to, the procedures by which the gaming operation delegates to its employees the authority to approve the issuance of complimentary services and items and the procedures by which conditions or limits, if any, which may apply to such authority are established and modified, including limits based on relationships between the authorizer and recipient, and shall further include effective provisions for audit purposes.

(b) At least weekly, accounting, MIS, or alternative personnel that cannot grant or receive complimentary privileges shall prepare reports that include the following information for all complimentary service or item that exceeds $50.00:

(1) Name of patron who received the complimentary service or item;

(2) Name(s) of employee(s) who issued and/or authorized the complimentary service or item;

(3) The actual cash value of the complimentary service or item;

(4) The type of complimentary service or item (i.e., food, beverage, etc.); and

(5) Date the complimentary service or item was issued.

(c) The internal audit or accounting departments shall review the reports required in paragraph (b) of this section at least weekly. These reports shall be made available to the Tribe, the tribe's independent regulatory body, and the Commission upon request.

§ 542.18 Who may apply for a variance and how do I apply for one?

(a) Variance for Tier A and Tier B gaming operations. (1) A Tribe may apply for a variance in its tribal MICS for Tier A or Tier B gaming operations if the Tribe has determined that:

(i) The gaming operation is unable to comply substantially with an internal control standard in this part; and

(ii) The gaming operation develops a variance that will achieve adequate control for the standard which it seeks to replace.

(2) For each standard for which the Tribe seeks a variance, the Tribe shall submit to the Commission a detailed report which shall include the following information:

(i) An explanation of why the gaming operation is unable to comply substantially with the standard;

(ii) A description of the proposed variance;

(iii) An explanation of how the proposed variance achieves adequate control; and

(iv) Evidence that the Tribe or its independent regulatory body has approved the variance.

(3) The Commission may test the adequacy of the variance.

(b) Variances for Tier B and C gaming operations. (1) A Tribe may apply for a variance in its tribal MICS for Tier C gaming operations if the Tribe has determined that the variance will achieve at least the same level of control as the standard the variance is to replace.

(2) For each standard for which the Tribe seeks a variance, the Tribe shall submit to the Commission a detailed report which shall include the following information:

(i) An explanation of why the Tribe is seeking a variance;

(ii) A description of the proposed variance;

(iii) An explanation of how the proposed variance achieves at least the same level of control as the standard it is to replace; and

(iv) Evidence that the Tribe or its independent regulatory body has approved the variance.

(3) The Commission may test the adequacy of the variance.

(c) The Commission may grant the request for a variance upon its sole discretion. Variances will not be granted routinely. The gaming operation shall comply with standards at least as stringent as those set forth in this part until such time as the Commission approves a request for a variance.

(d) Approval of variances shall expire three years from the date of approval. A Tribe may apply for a renewal of a variance by submitting a request which shall include a justification of why the variance should be renewed. The Commission may grant the request for renewal of a variance upon its sole discretion.

§ 542.19 Does this part apply to charitable bingo operations?

(a) This part shall not apply to charitable bingo operations provided that:

(1) All proceeds are for the benefit of a charitable organization;

(2) The Tribe permits the charitable organization to be exempt from this part;

(3) The charitable bingo operation is operated wholly by the charitable organization's employees or volunteers;

(4) The annual gross gaming revenue of the charitable organization does not exceed $50,000; and

(5) The Tribe establishes and the charitable bingo operation complies with minimum standards which shall protect the integrity of the game and safeguard the monies used in connection with the game.

(b) Nothing in this section shall exempt bingo operations conducted by independent operators for the benefit of a charitable organization.

Authority and Signature

This Final Rule was prepared under the direction of Montie R. Deer, Chairman, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005.

Signed at Washington, DC this 18th day of December, 1998.

Montie R. Deer,

Chairman.

[FR Doc. 98–34151 Filed 12–30–98; 8:45 am]

BILLING CODE 7565–01–P

Federal Register

Tuesday
January 5, 1999

Part IV

Department of Labor

Employment and Training Administration

20 CFR Parts 655 and 656

Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 655 and 656

RIN 1215–AB09

Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States

AGENCY: Employment and Training Administration, Labor, in concurrence with the Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of Proposed Rulemaking; request for comments.

SUMMARY: The Department of Labor is proposing regulations to implement recent legislation and clarify existing Departmental rules relating to the temporary employment in the United States of nonimmigrants under H–1B visas. Specifically, the Department publishes this notice of proposed rulemaking to obtain public comment on issues to be addressed in regulations to implement changes made to the Immigration and Nationality Act (INA) by the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). For certain of these ACWIA issues, the Department is proposing regulatory language for comment; for other issues, the Department is identifying concerns and its proposed approach to addressing them or alternative approaches, on all of which comments are requested. In addition, the Department is providing an opportunity for additional comments on certain provisions which were previously published for comment as a Proposed Rule in 1995 (60 FR 55339).

The Department is also proposing to modify regulations to implement an ACWIA provision which modifies the methodology for the determination of the prevailing wage under the Permanent Labor Certification program (20 CFR Part 656), but is not proposing specific regulatory text at this time. This methodology is also applicable to prevailing wages for the H–1B program. The Department is working in close cooperation with the Immigration and Naturalization Service (INS) in developing these regulations, since certain definitions and terms must be consistently applied by the two agencies in their respective regulations.

After receiving public comments on this notice of proposed rulemaking, the Department plans to publish an Interim Final Rule (inviting further comment) and a Final Rule (after reviewing all the comments received).

DATES: Submit written comments by February 4, 1999. The Department encourages submission of comments as soon as possible before that date. Any comments received by the Department after that date will be part of the rulemaking record and will be considered, fully, in subsequent rulemaking, but they may not receive full consideration in the interim implementing regulations. Congress expressed its intent that the Department act swiftly to issue regulations by waiving the customary 60-day comment period.

ADDRESSES: Submit written comments concerning Part 655 to Deputy Administrator, Wage and Hour Division, ATTN: Immigration Team, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW, Washington, DC 20210. If you want to receive notification that we received your comments, you should include a self-addressed stamped post card. You may submit your comments by facsimile (''FAX'') machine to (202) 219–5122. This is not a toll free number.

Submit written comments concerning Part 656 to the Assistant Secretary for Employment and Training, ATTN: Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue, NW, Washington, DC 20210. If you want to receive notification that we received your comments, you should include a self-addressed stamped post card. You may submit your comments by facsimile (''FAX'') machine to (202) 208–5844. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: On Part 655, contact either of the following:

Michael Ginley, Director, Office of Enforcement Policy, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3510, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 693–0745 (this is not a toll-free number).

James Norris, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 219–5263 (this is not a toll-free number).

On Part 656, contact James Norris, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 219–5263 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The H–1B visa program is a voluntary program that allows employers to temporarily secure and employ nonimmigrants admitted under H–1B visas to fill specialized jobs in the United States. (Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*). The statute, among other things, requires that an employer pay an H–1B worker the higher of its actual wage or the locally prevailing wage, to protect U.S. workers' wages and moderate any economic incentive or advantage in hiring temporary foreign workers. Under the Immigration and Nationality Act (INA), as amended by the Immigration Act of 1990 and the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, an employer seeking to employ an alien in a specialty occupation or as a fashion model of distinguished merit and ability on an H–1B visa is required to file a labor condition application with and receive certification from the Department of Labor before the Immigration and Naturalization Service (INS) may approve an H–1B visa petition. The labor condition application (LCA) process is administered by the Employment and Training Administration (ETA); complaints and investigations regarding labor condition applications are the responsibility of the Wage and Hour Division, Employment Standards Administration (ESA).

This proposed rule would implement statutory changes in the H–1B visa program made to the INA by the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) (Title IV of Pub. L. 105–277, Oct. 21, 1998; 112 Stat. 2681). The ACWIA, among other things, temporarily increases the maximum number of H–1B visas permitted each year; temporarily requires new non-displacement (layoff) and recruitment attestations by ''H–1B dependent'' employers (as defined by ACWIA) and by employers found to have committed willful violations or misrepresentations; and requires all employers of H–1B workers to offer the same fringe benefits

to H–1B workers as it offers to U.S. workers.

A. Labor Condition Application (LCA)

Summary: The process of protecting U.S. workers begins with a requirement that employers file a labor condition application (Form ETA 9035) with the Department. In this application the employer is required to attest: (1) that it will pay H–1B aliens prevailing wages or actual wages, whichever are greater; (2) that it will provide working conditions that will not adversely affect the working conditions of U.S. workers similarly employed; (3) that there is no strike or lockout at the place of employment; and (4) that it has publicly notified its employees of its intent to employ H–1B workers. In addition, the employer must provide the information required in the application about the number of aliens sought, occupational classification, wage rate, the prevailing wage rate and the source of such wage data, the date of need and period of employment.

Need: Pursuant to ACWIA, new attestation requirements become applicable to H–1B dependent employers or willful violators after promulgation of implementing regulations. The LCA, currently approved by OMB under OMB No. 1205–0310, is being revised to identify H–1B dependent employers and willful violators and provide for their attestation to the new requirements, and to accommodate electronic processing.

Respondents and frequency of response: ACWIA increased the number of available H–1B nonimmigrant visas from 65,000 to 115,000 in fiscal years 1999 and 2000 and to 107,500 in fiscal year 2002. Besides the increase in LCAs filed for these additional workers, the proposed regulation provides that H–1B dependent employers could be required to file new LCAs. It is estimated that 249,500 LCA's will be filed annually by 50,000 H–1B employers (dependent and nondependent). This estimate is based on the assumption that the alternative LCA format preferred by the Department is selected.

Estimated total annual burden: The only added LCA burden is for employers to determine if they are dependent. In most cases employers will be able to immediately answer this question, without review of their payroll records. Where dependent or non-dependent status is not readily apparent, employers would be required to make a mathematical calculation to determine if they must make the additional attestations required of an H–1B employer. (See C. below for further explanation.) The time required to review records and make the determination is estimated to take an average of 30 minutes per employer. Since it is estimated that only 50 H–1B employers will find it necessary to make this calculation, out of a total of 50,000 H–1B employers, the estimate of the average time necessary to complete the form remains at 1 hour. Total annual burden is 249,500 hours.

B. Documentation of Corporate Identity

Summary: Currently, the regulatory requirement is that a new labor condition application (LCA) must be filed when an employer's corporate identity changes and a new Employer Identification Number (EIN) is obtained. Under the proposed rule, an employer who merely changes corporate identity through acquisition or spin-off need merely document the change in the public file (including an express acknowledgement of all LCA obligations on the part of the successor entity), provided it satisfies the Internal Revenue Code definition of a single employer, found at 26 U.S.C. 414 (see 8 U.S.C. 1182(n)(3)(C)(ii)).

Need: The regulation is designed to eliminate a burden on businesses to file a new LCA, while at the same time ensuring that the public is aware of the changes and that the employer will continue to follow its LCA obligations.

Respondents and Proposed Frequency of Response: It is estimated that 500 H–1B employers will be required to file the subject documentation annually.

Estimated total annual burden: It is estimated that the recording and filing of each such document will take 15 minutes for a total annual burden of 125 hours.

C. Determination of H–1B Dependency

Summary: An H–1B employer must calculate the ratio between the number of H–1B workers it employs and the number of full-time equivalent employees (FTEs) to determine whether it meets the statutory definition of an H–1B dependent employer . (8 U.S.C. 1182 (n)(3)(A)). When it is a close question, this determination would ordinarily be made by examination of an employer's quarterly tax statement and last payroll or other evidence as to average hours worked by part-time employees to aggregate their hours into FTEs, together with a count of the number of workers employed under H–1B petitions. Documentation of this determination must be made where non-dependent status is not readily apparent and a mathematical determination must be made. A copy of this determination must be placed in the public disclosure file. In addition, if an employer changes from dependent to non-dependent status, or vice versa, a simple statement of the change in status must be placed in the public disclosure file. An employer must retain hours worked records or other evidence of the average work schedules of part-time employees only, and copies of H–1B petitions for its H–1B workers.

Need: Documentation of a determination of an H–1B dependency where it is a close question is necessary to determine employer compliance with H–1B requirements, and to advise the public of an employer's status. The underlying documentation must be retained to allow the Department to check this determination.

Respondents and proposed frequency of response: All employers will be required to keep the underlying documentation. It is estimated that approximately 50 H–B employers will be required to review their records in order to make the determination, with 25 employers who are found not to be dependent employers required to document this determination annually.

Estimated annual burden: The making and documentation of each such determination will take approximately 15 minutes, and occur at least twice annually, for a total annual burden of 12.5 hours.

D. Filing of Copy of INS Documentation for Exempt H–1B Employees in Public Access File

Summary: The ACWIA provisions regarding non-displacement and recruitment of U.S. workers do not apply where the LCA is used only for petitions for exempt H–1B workers. (8 U.S.C. 1182(n)(1)(E)(ii)) Where the Immigration and Naturalization Service (INS) determines a worker is exempt, employers are required to maintain a copy of such documentation in the public access file.

Need: Determinations as to whether or not H–1B workers meet the requirements to be classified as exempt H–1B nonimmigrants will be made initially by the INS in the course of adjudicating the petitions filed on behalf of H–1B nonimmigrants by dependent employers. In the event of an investigation, it is anticipated that considerable weight will be given to the INS determination that H–1B nonimmigrants were exempt based on the educational attainments of the workers, since INS has considerable experience in evaluating the educational qualifications of aliens. Retention of copies of such determinations will aid DOL in determining compliance with the H–1B requirements.

Respondents and frequency of response: It is estimated that 28,125 such documents will need to be filed annually.

Estimated total annual burden: Each such filing will take approximately one minute for an annual burden of approximately 468.8 hours.

E. Record of Assurance of Non-displacement of U.S. Workers at Second Employer's Worksite

Summary: 8 U.S.C. 1182(n)(1)(F)(ii) generally requires an H–1B dependent employer not to place H–1B nonimmigrant with another employer unless it has first inquired as to whether the other employer will displace a U.S. worker. The proposed regulation would require an employer seeking to place an H–1B nonimmigrant with another employer to secure and retain either a written assurance from the second employer, a contemporaneous written record of the second employer's oral statements regarding non-displacement, or a prohibition in the contract between the H–1B employer and the second employer.

Need: Pursuant to ACWIA, 8 U.S.C. 1182(n)(2)(E), an H–1B employer may be debarred for a secondary displacement ''only if the Secretary of Labor found that such placing employer * * * knew or had reason to know of such displacement at the time of the placement of the nonimmigrant with the other employer.'' Congress clearly intended that the employer make a reasonable inquiry and give due regard to available information. In order to assure that the purposes of the statute are achieved, the Department is developing a regulatory provision to require that the H–1B employer make a reasonable effort to inquire about potential secondary displacement and to document those inquiries.

Respondents and proposed frequency of response: It is estimated that approximately 150 employers will place H–1B nonimmigrants with secondary employers where assurances are required.

Estimated total annual burden: It is estimated each such assurance will take approximately 5 minutes and each such employer will obtain such assurances 5 times annually for an annual burden of 62.5 hours.

F. Documentation of Non-Displacement of U.S. Workers

Summary: ACWIA (8 U.S.C. 1182(n)(1)(E) prohibits H–1B dependent employers and willful violators from hiring an H–1B nonimmigrant if their doing so would displace a U.S. worker from an essentially equivalent job in the same area of employment. The regulations will require H–1B dependent employers to keep certain documentation with respect to each former worker in the same locality and same occupation as any H–1B worker, who left its employ 90 days before or after an employer's petition for an H–1B worker. For all such employees, the Department proposes that covered H–1B employers maintain the name, last-known mailing address, occupational title and job description, and any documentation concerning the employee's experience and qualifications, and principal assignments. Further, the employer is required to keep all documents concerning the departure of such employees and the terms of any offers of similar employment to such U.S. workers and responses to those offers.

Need: These records are necessary for the Department to determine whether the H–1B employer has displaced similar U.S. workers with H–1B nonimmigrants.

Respondents and proposed frequency of response: It is estimated that 200 H–1B-dependent and willfully violating employers will need to maintain documentation for any workers who leave their employment during the prescribed period.

Estimated total annual burden: No records need be created to comply with these requirements, since the Equal Employment Opportunity Commission (EEOC) already requires under its regulations that the records described above be maintained.

G. Documentation of U.S. Worker Recruitment

Summary: Pursuant to ACWIA (8 U.S.C. 1182(n)(1)(G)), H–1B dependent employers are required to make good faith efforts to recruit U.S. workers before hiring H–1B workers. Under the regulations, H–1B employers will be required to retain documentation of the recruiting methods used, including the places and dates of the advertisements and postings or other recruitment method used, the content of the advertisements or postings, and the compensation terms. In addition, the employer must retain any documentation concerning consideration of applications of U.S. workers, such as copies of applications and related documents, rating forms, job offers, etc. The Department has also requested comments regarding how employers should determine industry-wide standards, and how to make this determination available for public disclosure to U.S. workers and others.

Need: The documentation noted above is necessary for the Department of Labor to determine whether the employer has made a good faith effort to recruit U.S. workers and for the public to be aware of the recruiting methods used and the industry standard. Retention of the records regarding consideration of applications is required to ensure employers have given good faith consideration of applications from U.S. workers.

Respondents and proposed frequency of response: It is estimated that annually 200 H–1B dependent employers will need to document their good faith efforts to recruit U.S. workers.

Estimated total annual burden: The filing of such records will take approximately twenty minutes per employer for an annual burden of approximately 66.7 hours. The retention of documents relating to applications by U.S. workers is already required by EEOC regulations, and therefore no additional burden is created.

H. Documentation of Fringe Benefits

Summary: Pursuant to ACWIA (8 U.S.C. 1182(n)(2)(C)(viii)), all employers of H–1B employees are required to offer benefits to H–1B workers on the same basis and under the same terms as offered to similarly employed U.S. workers. The regulations require employers to retain copies of all fringe benefit plans and any summary plan descriptions, including all rules regarding eligibility and benefits, evidence of what benefits are actually provided to individual workers and how costs are shared between employers and employees.

Need: These records are necessary for the Department to determine whether the H–1B nonimmigrants are offered the same fringe benefits as similarly employed U.S. workers.

Respondents and proposed frequency of response: Records are required to be retained for all H–1B employers, estimated to total 50,000. Because copies of fringe benefit plans and records are generally required to be maintained by the Pension and Welfare Benefits Administration (PWBA) and Internal Revenue Service (IRS) regulations, there should be no additional recordkeeping burden from these requirements. It is also believed that a prudent businessman would keep these records, in the order course of business, in any event. However, because some plans such as unfunded vacation plans and cash bonuses may not be documented, it is estimated that approximately 5%, or 2,500 employers, will need to record and retain some

documentation which would not otherwise be kept.

Estimated annual burden: It is estimated that 2,500 employers will spend approximately 15 minutes each documenting unwritten plans for an annual burden of 625 hours.

I. Wage Recordkeeping Requirements Applicable to Employers of H–1B Nonimmigrants

Summary: The Department has also republished and asked for comment on several provisions of the December 20, 1994 Final Rule (59 FR 65646), which were published for notice and comment on October 31, 1995 (60 FR 55339). All H–1B employers are required to document their objective actual wage system to be applied to H–1B nonimmigrants and U.S. workers. They are also required to keep payroll records for non-FLSA exempt H–1B workers and other employees for the specific employment in question. This proposal would decrease the burden on employers of keeping hourly pay records for U.S. workers, requiring such records only if the worker is either not paid on a salary basis, or if the actual wage is stated as an hourly wage. For H–1B workers, such records must also be kept if the prevailing wage is expressed as an hourly rate.

Need: The statute requires that the employer pay H–1B nonimmigrants the higher of the actual or prevailing wage. In order to determine whether the employer is paying the required wage, the Department must be able to ascertain the system an employer uses to determine the wages of non-H–1B workers. The Department also believes that it is essential to require the employer to maintain payroll records for the employer's employees in the specific employment in question at the place of employment to ensure that H–1B nonimmigrants are being paid at least the actual wage being paid to non-H–1B workers or the prevailing wage, whichever is higher.

Respondents and proposed frequency of response: The Department estimates that approximately 50,000 employers employ H–1B nonimmigrants. The documentation of the actual wage system must be done only one time for each employer. Hourly pay records would have to be prepared with respect to all affected employees each pay period.

Estimated annual burden: The Department estimates that the public burden is approximately 1 hour per employer per year to document the actual wage system for a total burden to the regulated community of 50,000 hours in a year. The payroll recordkeeping requirements are virtually the same as those required by the Fair Labor Standards Act (FLSA) and any burden required is subsumed in OMB Approval No. 1215–0017 for those regulations at 29 CFR Parts 516, except with respect to records of hours worked for exempt employees. There will be no burden for U.S. workers since as a practical matter, hours worked records will be required for U.S. workers only if they are not exempt from FLSA, or if they are exempt but paid on an hourly basis (certain computer professionals). The Department estimates that 55,000 H–1B workers will be paid on a salary basis. Hours worked records would be required for these workers only if the prevailing wage is expressed as an hourly rate—estimated to be 17 percent of all cases. The Department estimates a burden of 2.5 hours per worker per year, for 9350 workers, and a total of 23,375 hours.

Retention of Records: Pursuant to section 655.760(c) of Regulations, 20 CFR Part 655, copies of the LCAs, and its documentation are to be kept for a period of one year beyond the end of the period of employment specified on the LCA or one year from the date the LCA was withdrawn, except that if an enforcement action is commenced, these records must be kept until the enforcement procedure is completed as set forth in Part 655, Subpart I. The recordkeeping requirements in this proposed rule would be subject to the same retention period, except, as required by 20 CFR 655.760(c), the payroll records for the H–1B employees and other employees in the same occupational classification, which must be retained for a period of three years from the date(s) of the creation of the record(s); if an enforcement proceeding is commenced, all payroll records are to be retained until the enforcement proceeding is completed as set forth in Part 655, Subpart I. The existing record retention requirements in 20 CFR 655.760(c) have been approved by OMB under OMB No. 1205–0310.

Total public burden: H–1B employers and employees of H–1B employers may be from a wide variety of industries. Salaries for employers and/or their employees who perform the reporting and recordkeeping functions required by this regulation may range from several hundred dollars to several hundred thousand dollars where the Corporate Executive Office of a large company performs some or all of these functions themselves. Absent specific wage data regarding such employers and employees, respondent costs are estimated at $25 an hour. Total annual respondent hour costs for all information collections are estimated at $8,105,887.50 ($25.00 x 324,235.5 hours).

Request for comments: The public is invited to provide comments on this information collection requirement so that the Department of Labor may:

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimates of the burdens of the collections 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 collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Written comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20503. Office of Management and Budget, Attention: Desk Officer for Employment Standards Administration, U.S. Department of Labor, Washington, DC 20503.

II. Background

On November 29, 1990, the Immigration and Nationality Act was amended by the Immigration Act of 1990 (IMMACT) (Pub. L. 101–649, 104 Stat. 4978) to create the ''H–1B visa program'' for the temporary employment in the United States (U.S.) of nonimmigrants in ''specialty occupations'' and as ''fashion models of distinguished merit and ability.'' The H–1B provisions of the INA were amended on December 12, 1991, by the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA) (Pub. L. 102–232, 105 Stat. 1733). Further amendments were made to the H–1B provisions of the INA on October 21, 1998, by enactment of ACWIA.

These cumulative amendments of the INA assign responsibility to the Department of Labor (Department or DOL) for implementing several provisions of the Act relating to the temporary employment of certain categories of nonimmigrants who have

been granted entry into the United States by INS. The H–1B provisions of the Act govern the temporary entry of foreign ''professionals'' to work in ''specialty occupations'' in the U.S. under H–1B visas. 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184(c). The H–1B category of specialty occupations consists of occupations requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a Bachelor's or higher degree in the specific specialty as a minimum for entry into the occupation in the U.S. 8 U.S.C. 1184(i)(1). In addition, an H–1B nonimmigrant in a specialty occupation must possess full State licensure to practice in the occupation (if required), completion of the required degree, or experience equivalent to the degree and recognition of expertise in the specialty. 8 U.S.C. 1184(i)(2). The category of ''fashion model'' requires that the nonimmigrant be of distinguished merit and ability. 8 U.S.C. 1101(a)(15)(H)(i)(b).

The ACWIA made numerous significant changes in the H–1B provisions. One such change is the temporary increase in the maximum number of H–1B visas over the next three fiscal years: for fiscal years 1999 and 2000, the cap is 115,000; for fiscal year 2001, the cap is 107,500; and for fiscal year 2002 (and thereafter), the cap returns to the original 65,000. Another significant change is the imposition of additional attestation requirements for certain employers to provide better protections to some U.S. workers. The additional attestation requirements apply to an ''H–1B dependent employer'' and an employer who has been found to have committed a willful failure or misrepresentation with respect to the H–1B requirements (for ease of reference, referred to as a ''willful violator''). H–1B-dependent and willful violating employers must attest that they have not displaced and will not displace a U.S. worker from a job that is essentially like the job for which an H–1B worker(s) is being sought, that they will not place an H–1B worker with another employer without making an inquiry to assure such displacement will not take place, that they have taken good faith steps to recruit U.S. workers for the job for which the H–1B workers are sought, and that they will offer the job to any equally or better qualified U.S. worker. A labor condition application (LCA) for an H–1B worker who is ''exceptional,'' an ''outstanding professor or researcher,'' or a ''multinational manager or executive'' within the meaning of Section 203(b)(1) of the INA, is not subject to the recruitment provision. Both the displacement protection and the recruitment/hiring protection become effective upon the date of the Department's final regulation and expire with respect to LCAs filed before October 1, 2001. An H–1B dependent employer or willful violator filing an LCA which will be used only for ''exempt'' H–1B workers is not required to comply with the new attestation requirements.

Also enacted via the ACWIA is a new fee of $500, to be collected by INS, for initial petitions and first extensions filed on or after December 1, 1998 and before October 1, 2001. Institutions of higher education, or related or affiliated nonprofit entities, nonprofit research organizations, or Governmental research organizations are exempt from the new fee. The fees are to be used for job training, low-income scholarships, and program administration/enforcement. The ACWIA includes other generally applicable worker protections, specifically whistleblower protection, prohibitions against fee reimbursement and penalizing an H–1B worker who terminates employment prior to a date agreed with the employer, and a requirement that the employer pay wages during nonproductive time if such time is not due to reasons occasioned by the worker. The ACWIA also requires employers to offer H–1B workers fringe benefits on the same basis and in accordance with the same criteria as U.S. workers. The ACWIA specifies new civil money penalties ranging from $1,000 to $35,000 per violation, along with debarment. New investigative procedures are created, authorizing the Department to conduct ''random'' investigations of willful violators during the five-year period after the finding of such violation, and establishing an alternative investigation protocol based on information indicating potential violations obtained from sources other than aggrieved parties.

The ACWIA mandates a particular method of computation of the local prevailing wage for employees of certain types of employers: institutions of higher education (as defined in section 101(a) of the Higher Education Act); nonprofit entities related or affiliated with such institutions; nonprofit research organizations; and Governmental research organizations. Under the ACWIA provision, the prevailing wage level is to take into account only employees at such institutions and organizations.

The rulemaking history, as published in the **Federal Register**, is as follows:

March 20, 1991, Advance Notice of Proposed Rulemaking, 56 FR 11705.

August 5, 1991, Proposed Rule, 56 FR 37175.

October 22, 1991, Interim Final Rule, 56 FR 54720.

January 13, 1992, Interim Final Rule, 57 FR 1316.

October 6, 1993, Proposed Rule, 58 FR 52152.

December 30, 1993, Interim Final Rule, 58 FR 69226.

December 20, 1994, Final Rule, 59 FR 65646.

January 19, 1995, Final Rule, 60 FR 4028.

September 26, 1995, Notice, 60 FR 49505.

October 31, 1995, Proposed Rule, 60 FR 55339.

April 22, 1996, Proposed Rule, 61 FR 17610 (Part 656).

May 3, 1996, Final Rule, 61 FR 19982.

September 30, 1996, Final Rule, 61 FR 51013.

November 30, 1998, Final Rule, 63 FR 65657 (Part 656).

III. The Process of Developing Proposed Regulations

In developing proposed regulations, the Department has identified a number of issues arising from the provisions of the ACWIA. On some of these issues, the Department is proposing regulatory language and is seeking comments on those proposals. But on other issues, the Department has not yet developed regulatory language and, in this notice, is seeking public comments on the issues and possible regulatory approaches or alternatives which are set forth.

In addition, the Department is continuing to examine several provisions that were previously addressed in a Notice of Proposed Rulemaking published in the **Federal Register** on October 31, 1995 (60 FR 55339–55348). The Department considers it appropriate to provide, via this notice, an additional opportunity for public comment on those provisions. Some of these existing Final Rule provisions are affected by the enactment of ACWIA, and for some affected provisions the Department has not yet developed new or modified regulatory language. Other Final Rule provisions are being republished for comment, with limited proposed changes as discussed below.

After review of the comments received, the Department intends to publish an Interim Final Rule, inviting comments on that rule, which will contain the full regulatory text. The Department will then review the comments and issue a Final Rule.

The Department requests comments on each of the following issues and proposals, and on any other related matters concerning the temporary employment in the U.S. of nonimmigrants under the H–1B visa program.

A. What Constitutes an ''Employer'' for Purposes of the ACWIA Provisions?

In enacting certain new LCA attestations for ''H–1B-dependent'' (and certain other) employers in the ACWIA, Congress directed (in the definition of H–1B-dependent employer) that ''any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer.'' These provisions, found at 26 U.S.C. 414(b), (c), (m) and (o), concern the circumstances in which separate businesses are treated as a single employer for purposes of the Internal Revenue Code (IRC). Specifically, the IRC provisions concern treatment of a controlled group of corporations (§ 414(b)); partnerships, proprietorships, etc., under common control (§ 414(c)); an affiliated service group (§ 414(m)); as well as separate organizations, employee leasing, and other arrangements (§ 414(o)). *See* Internal Revenue Service (IRS) regulations at 26 CFR 1.414(b)–1, 1.414(c)–1. *See also* 26 CFR 1.414(q)–1T.

Further, the Department is considering the effect and implications of adopting this single definition of ''employer'' for all purposes under this program, to the extent it may serve to accommodate common business activities and facilitate administration and enforcement of the program. The Department is interested in learning from commenters the consequences of a regulation which would provide that where an ''employer'' files an LCA and thereafter undergoes some change of structure (*e.g.*, buy-out by a successor corporation; corporate restructuring of subsidiaries), the ''employer'' for LCA purposes would be the entity which satisfies the Internal Revenue Code definition of a single employer. The Department is considering whether and how, under this approach, it may be able to modify its position that a new LCA must be filed when the corporate identity changes and a new Employer Identification Number (EIN) is obtained. Thus an employer which merely changes its corporate identity through acquisition or spin-off would be allowed to document this change in its public disclosure file (including an express acknowledgment of all LCA obligations on the part of the successor entity), provided that it satisfies the Internal Revenue Code definition of a single employer.

The Department seeks comments on this proposed regulation and on other related matters, such as whether and how the Internal Revenue Code interpretation of ''single employer'' should be used for other purposes in the H–1B program, such as corporate restructuring, and whether another approach should be utilized to address corporate restructuring.

B. Which Employers are ''H–1B-dependent'' for Purposes of the ACWIA Provisions?

The ACWIA requires new non-displacement and recruitment attestations by ''H–1B-dependent employers'' and by employers found after the date of enactment to have committed a willful violation or misrepresentation during the 5-year period preceding the filing of the LCA (*see* item M.2 below, regarding the ''finding'' of such violations). The ACWIA definition of ''H–1B-dependent employer'' provides a formula for comparing the number of H–1B nonimmigrants to the total number of full-time equivalent employees (including H–1B nonimmigrants) in the employer's workforce. ''Exempt H–1B nonimmigrants'' are not included in the H–1B-dependency computation during a certain period after enactment of the ACWIA (*i.e.*, the longer of the period of six months from the date of enactment (until April 21, 1999), or the date of the Department's interim final rule on this provision).

The Department is developing regulations on the following issues, and seeks comments on these and any other related matters.

1. What Is a ''Full Time Equivalent Employee''?

The ACWIA definition of ''H–1B-dependent employer'' includes a term that is not defined: ''full-time equivalent employees'' (FTEs), as part of the calculation to determine an employer's H–1B dependency status based on the ratio between the number of H–1B workers (a ''head count'') and FTEs (the employer's workforce of employees, expressed as FTEs). Thus ACWIA defines an ''H–1B-dependent employer'' as an employer that has—

- 25 or fewer full-time equivalent employees who are employed in the United States, and employs more than 7 H–1B nonimmigrants;
- At least 26 but not more than 50 full-time equivalent employees who are employed in the United States, and employs more than 12 H–1B nonimmigrants; or
- At least 51 full-time equivalent employees who are employed in the United States; and employs H–1B nonimmigrants in a number that is equal to at least 15 percent of the number of such full-time equivalent employees.

For larger employers (at least 51 full-time equivalent employees), the number of H–1B workers is the numerator and the number of FTEs is the denominator in this computation; if 15 percent or more of the employer's workforce are H–1B workers, as computed in this ratio, then the employer is ''H–1B-dependent.''

The term ''full-time equivalent'' lends itself to various interpretations, some of which could significantly increase an employer's possible paperwork burden. One interpretation would require maintaining a record and computing the hours worked in a period of time (a year, a workweek, or some intermediate period of time) for each worker in the entire workforce. For example, the total of all hours worked by all employees would be divided by the full-time ''standard'' in order to arrive at the FTE figure. Such an approach would necessitate collection and maintenance of hourly records for all workers, not just hourly wage earners. Moreover, the complexity of such an approach and the related computations could make it difficult for employers to recognize if and when they become H–1B-dependent. A less onerous approach would allow an employer to simply count the number of workers it employs on a full-time basis, using some standard threshold (e.g., 35 hours per week or more) for identifying a ''full-time'' schedule. This approach would only additionally require a showing of the average weekly hours worked by part-time employees, through hours worked records or by evidence regarding their standard working schedules. (It has been the Department's experience that hours worked records are ordinarily kept for part-time workers since they are ordinarily paid on an hourly basis and typically are not exempt from the Fair Labor Standards Act.) The number of FTEs in the workforce would then be determined by aggregating the average hours of the part-time workers, dividing that total by the standard for a full-time schedule, and adding the resulting number to the number of full-time workers in the workforce.

The Department proposes a procedure by which the determination would be made by an examination of the employer's quarterly tax statement (or

similar document) to determine the number of workers on the payroll (assuming there is no issue as to whether all employees are listed on the tax statement), and a further examination of the last payroll (or the payrolls over the previous quarter if the last payroll is not representative) or other evidence as to average hours worked by part-time employees, to aggregate the average hours of the part-time workers into FTEs based on the employer's definition of full-time employment. The Department would accept an employer's definition of full-time employment, provided that it is at least 35 hours or more per week; in the absence of such an employer definition, the Department would use 40 hours per week as a full-time schedule. However, in no case would a single employee count as more than one FTE, even if the employee commonly worked more hours per week than the ''full-time'' schedule. Finally, it should be noted that the count would be made only of employees of the employer, including both H–1B nonimmigrants and U.S. workers, but would not include *bona fide* consultants and independent contractors who do not meet the employment relationship test described below (*see* item D.1). It is important to note that the number of H–1B nonimmigrants (the numerator in the H–1B-dependency ratio) would be determined by the number of H–1B nonimmigrants employed by the employer in the period reviewed—a simple ''head count''—without regard to their full-time or part-time status.

The Department seeks comments on its proposed approach to determining full-time equivalency, and any other approaches which might be used to accurately make the determination without undue paperwork burden.

2. When Must an Employer Determine H–1B Dependency?

The ACWIA definition of ''H–1B-dependent employer'' and the new LCA attestation elements that are required of such an employer do not clearly define the timing of the dependency determination. Certainly such a determination must be made when a new LCA is filed. The two issues to be resolved are when a new LCA must be filed, and what obligations, if any, an employer has if its dependency status changes.

The Department is particularly concerned about the obligations of employers who already hold or may soon obtain certified LCAs. The Department's current regulations provide that an LCA is valid for three years from its date of certification, during which time the employer may file petitions for H–1B workers based on that LCA (not to exceed the number of positions shown on the LCA). The new recruitment and displacement attestation provisions of the ACWIA are expressly applicable to LCAs filed by a certain subset of H–1B employers after the date of issuance of the Department's interim final regulations. We expect that most H–1B-dependent employers have LCAs in effect and that many such employers may file additional LCAs during the period prior to the effective date of the regulations. Therefore—if this issue is not directly addressed by these regulations—these H–1B-dependent employers could avoid any application of the law's new dependency provisions, which are applicable only to applications filed before October 1, 2001, by continuing to use current or newly certified LCAs. Since this would, as a practical matter, potentially nullify these ACWIA requirements for all or many H–1B-dependent employers, the Department proposes that any current (or non-dependent) LCA will become invalid for H–1B-dependent employers by operation of these regulations with respect to any future H–1B petitions (including extensions), although an employer's obligations under the LCA would continue with respect to all H–1B nonimmigrant petitions under that LCA. The regulations would, therefore, require that all H–1B-dependent employers with existing LCAs file new LCAs if they wish to petition for any new H–1B nonimmigrants (or if they wish to seek the extension of any existing H–1B visas) on or after the effective date of the interim final regulations. Similarly, an employer with an existing LCA which is not H–1B-dependent on the effective date of the regulations but which later becomes H–1B-dependent, would be required to file a new LCA if it wishes to petition for new H–1B nonimmigrants (or seek extensions of existing H–1B visas) at any time after the date it becomes dependent. An employer who fails to take such action but instead uses an existing LCA contrary to these regulations would be subject to sanctions, including debarment and civil money penalties. The Department seeks comments on this proposed approach and on any other approaches which might be used to ensure that U.S. workers are provided with the protections which the Act intended with regard to H–1B-dependent employers.

As suggested above, the Department also recognizes that the makeup of an employer's workforce, and the ratio of H–1B nonimmigrants to total FTEs, could change significantly over the three-year validity period of an LCA. Thus an employer which is not H–1B-dependent at the time it files an LCA under these regulations might later become dependent, or an employer which is initially H–1B-dependent might later become non-dependent. The Department, after careful consideration, has concluded that, in order for the Congressional intent for the new provisions to be appropriately implemented, an employer's H–1B dependency may need to be redetermined as the composition of the workforce changes after the filing of the LCA, where the employer plans to take actions which require recruitment and non-displacement commitments by H–1B-dependent employers (or their clients).

Thus, the Department proposes that an employer would be required to make a determination of dependency not just prior to or on the effective date of these regulations, but when it files any new LCA or H–1B petition (including extensions) after that date. If an employer is not H–1B-dependent at the time an LCA is filed, it would have a continuing obligation to ensure that if it later becomes H–1B-dependent and wishes to file new H–1B petitions (including extensions), it takes the steps necessary to comply with the requirements of the law and the Department's regulations applicable to dependent employers during the period it is H–1B-dependent, with respect to all H–1B nonimmigrant petitions filed under that LCA. Similarly, if an employer which is initially dependent and files an LCA so indicating its dependency later determines that it has become not dependent, it would not be required to comply with the attestation elements applicable to dependent employers with respect to any H–1B workers during any period in which it is not dependent.

The Department believes that this approach is necessary to properly effectuate the law's new requirements and does not believe that this continuing obligation places any undue burden on employers. As a practical matter, the Department's experience in the H–1B program is that the large majority of employers which use the program clearly will not meet the test for H–1B-dependency and that most program users would, therefore, be entirely unaffected by this ACWIA provision and the Department's regulations. With regard to the small minority of employers who would meet the H–1B-dependency test, the

Department's experience is that most such employers employ H–1B workers in such a large proportion that they would almost certainly be subject to the non-displacement and recruitment requirements during the entire LCA validity period. As a practical matter, therefore, any continuing obligation for an employer to monitor its workforce ratio would apply only in the very rare instance where the H–1B-dependency determination is a close question for a ''borderline'' employer on the effective date of these regulations, or upon the date of a subsequent LCA filing or petition and thereafter.

The Department also considered whether the same issues would arise with respect to employers found after the effective date of ACWIA to have committed willful violations or misrepresentations. However, a finding of a willful violation or misrepresentation would commonly result in debarment and consequently, invalidation of all the employer's LCA's. The employer would then be required to file a new LCA(s) to petition for additional H–1B nonimmigrants (or to extend petitions) after the debarment period ends, attesting to the new attestation elements for H–1B dependent employers and willful violators.

The Department seeks comments on its proposal, and specifically whether there are other ways to effectively accomplish the statutory intent that H–1B-dependent employers comply with the new attestation elements. For example, another possible regulatory approach could be to have the dependency up-date determined on a set, regular basis, such as for each calendar quarter. Alternatively, the Department could limit the use of an attestation to a shorter period, such as 90 or 180 days, instead of the current three years.

3. What Kind of Records Are Required Concerning the H–1B-Dependency Determination?

The Department is considering several matters relating to documentation. First, the Department is examining the issue of the kind of record which might need to be made by an employer concerning its determination of whether it is or is not H–1B-dependent at the time that an LCA is completed and filed. It is the Department's view that no record needs to be created or maintained to show how an employer made that determination when its H–1B-dependency or non-dependency status is apparent, and it files an LCA reflecting that obvious status. As discussed above, the Department believes that for the vast majority of employers there is either such a small or large proportion of H–1B nonimmigrants employed that an employer's dependency status will not be a close question. With regard to an employer for which the H–1B-dependency or non-dependency status is not readily apparent, the question of appropriate records is more difficult. The Department believes that it is important that the employer make this determination with proper care and consideration. Further, the Department believes that, in the event of an inquiry by an affected U.S. worker (concerning possible rights regarding displacement or recruitment) or an investigation by the Department, documentation of an employer's determination that it is not H–1B-dependent needs to be available to ascertain and evaluate the method by which the determination was made. Therefore the Department proposes that such documentation be required wherever the determination that an employer is not dependent is not readily apparent and a mathematical calculation must be made (i.e., where the ratio of H–1B workers to U.S. workers is close to that set forth in the statute for dependency). The Department solicits comments on whether the regulations need to define an explicit standard (for example, all circumstances where H–1B workers are 10 percent or more of the workforce) to determine the subset of employers which must make and retain such documentation when an attestation is made.

The Department also is considering whether a record must be kept of an employer's H–1B-dependency status determinations (if any) which are made after the filing of an LCA which is used in support of a petition for an H–1B nonimmigrant worker. The Department believes that—in order that U.S. workers are aware of their rights concerning nondisplacement and recruitment, and that the Administrator is able to conduct fair and effective investigations on those matters—a record needs to be maintained of an employer's determination if at any time an employer which was non-dependent determines that it is dependent, or if an employer which was dependent determines that it is non-dependent. The Department is therefore proposing that a copy of the determination and, where an employer determines that it is not dependent, the underlying computation, be placed in the public disclosure file.

The Department also requests comments on whether it would be feasible and appropriate to specify that no record of an employer's computations would be necessary, if the determination could be made from publicly available documents. This approach presents some difficulties, in that, for example, a publicly available list of an employer's employees may not show the workers' full-time or part-time status, or may not accurately reflect the number of workers who meet the ''employment relationship'' test, and these documents may not be readily available to U.S. workers. The Department therefore solicits comments as to the feasibility of this approach and whether there are any generally available public documents which would normally contain the required information.

It is also necessary that an employer have the underlying records necessary to make the dependency determination. The records required to determine the number of workers on the payroll are required by § 655.731(b) of the existing regulations. An employer would also be required to have a record of the hours worked by part-time workers, or a document showing their normal work schedule if no records of their hours of work are maintained. As discussed above (*see* item B.1), it has been the Department's experience that most part-time workers are paid on an hourly basis and, therefore, that employers maintain hours-worked records for such workers. Finally, the employer would need to maintain copies of its H–1B petitions, in order to determine the number of H–1B nonimmigrants on its payroll.

The Department seeks comments on all of these issues and possible approaches.

4. What Information Will Be Required on the LCA Regarding an Employer's Status as H–1B-Dependent?

The Department expects that every employer will need to read the instructions for determining H–1B dependency and make a determination that it is or is not dependent, in order to determine whether to attest to dependency. In most cases, the Department expects that the determination will be so clear that the employer will not need to make any mathematical calculation. The Department also believes that it is important that those employers constituting the vast majority of those filing LCAs not be subject to any unnecessary burden because of the relatively small number of employers who are dependent.

The Department believes that the revised attestation form (LCA), at a minimum, should require that every

employer which is H–1B-dependent affirmatively acknowledge its status and obligations by checking a box attesting to its dependency and its compliance with the additional attestation requirements concerning non-displacement and recruitment of U.S. workers. Further, as discussed above, the Department proposes that H–1B-dependent employers which filed an LCA before these regulations become effective, may not use such an LCA in support of an H-1B petition filed after the effective date, or, if they do not become dependent until sometime after the effective date of the regulations, may not use such an LCA in support of an H–1B petition filed after they become dependent.

The question arises as to what information should be required of employers who are not H–1B dependent when they file an LCA after the effective date of these regulations. The Department is considering three alternative revisions to the LCA form for such employers:

1. The employer would expressly attest that it is not dependent and that if it later becomes dependent, it will comply with the additional attestation requirements; or

2. The employer would not have to attest that it is not dependent, but the LCA would clearly state—and by signing the form the employer would agree—that the employer is required to comply with the additional attestation requirements if it does become dependent; or

3. The employer would not have to attest that it is not dependent, but the LCA would clearly state that it could not be used in support of any H–1B petition filed after the employer became dependent.

Under all of the alternatives an employer will be expected to make an initial determination as to whether it is or is not dependent; to remain cognizant as to its status if it later files a new H–1B petition; and would commit misrepresentation if it falsely fails to attest that it is dependent. The first two alternatives do not require the filing of a new LCA should a formerly non-dependent employer become dependent, but such employer will be obliged to comply with the substantive obligations of the additional attestation elements applicable to dependent employers. The third alternative would parallel the approach proposed for H–1B dependent employers with LCAs filed before the effective date of the regulations in that an employer which initially was not dependent would be required to file a new LCA if it later became dependent and would be subject to sanctions, including debarment and civil money penalties, if it failed to do so.

The Department is concerned about the burden of requiring the filing of a new LCA as well as the burden of requiring the overwhelming majority of employers who are not dependent to check a box so attesting. The Department therefore proposes to utilize the second alternative, where the non-dependent employer would not be required to check any additional box(es). The Department is aware that under this alternative the lack of such identification will make it particularly important that the form clearly lay out the obligations of employers. The Department therefore seeks comments on the above alternatives, and the layout and clarity of the proposed attestation form, attached as Appendix I as well as any other comments on these and related matters.

5. What Changes Are Proposed for the Labor Condition Application Form and the Department's Processing Procedures?

Based on the preceding discussion, the Department is publishing for public comment a proposed revised Labor Condition Application form (ETA 9035), and providing advance public notice of a planned change in the existing system for processing LCAs. At present, such applications are submitted by mail, fax or private carrier to one of ten ETA regional offices with jurisdiction, as set forth in § 655.720. The Department has been developing the capacity to automatically receive and, in many cases, automatically process LCAs submitted. The Department intends to implement an automatic system whereby all faxed LCAs will be processed in Philadelphia and San Francisco beginning in January 1999. This new capacity requires changes in the LCA form as well as in the filing instructions.

The Department has redesigned the LCA form (attached as Appendix I) to both reflect the statutory changes in the ACWIA and facilitate the automated receipt and processing of applications. With the exception of the changes occasioned by the provisions of the ACWIA, as discussed in this proposed rulemaking, the proposed revisions to the LCA form are merely aesthetic. The Department's revised processing procedures will not require any substantive changes with respect to the information required of employers in preparing the LCA. When the Department publishes the Interim Final Rule pursuant to this proposal, contingent upon approval by the Office of Management and Budget, the revised form will become the sole form for public use; thereafter, prior versions of the ETA 9035 will not be accepted for processing.

The Department proposes that, after the effective date of the Interim Final Rule, all LCAs—whether submitted by fax or not—will be filed with one of two ETA regional offices. Employers within the jurisdiction of ETA's current Boston, New York, Philadelphia, and Atlanta regions will submit LCAs only to the Philadelphia regional office; employers within the jurisdiction of ETA's current Chicago, Kansas City, Dallas, Denver, Seattle and San Francisco regions will submit LCAs only to the San Francisco regional office. There will be an automated back-up capacity in the Washington, D.C. headquarters for automated processing of LCAs, in the event of a system failure in one of the regional offices.

The proposed revised LCA form can be completed in several ways—in handwriting, in typewriting, or through use of a new ''form filler'' electronic program that will be generally available to program users. The new LCA form will be posted and thereafter can be down-loaded and printed from the Department's World Wide Web site at http://www.doleta.gov. The ''form filler'' electronic program will also be available to be down-loaded from this web site, or can be obtained from ETA headquarters, on request, via e-mail or on diskette. This ''form filler'' electronic program will enable the user to easily complete the LCA form with a font that can be reliably read by the Department's automated LCA processing system.

The Department proposes that, under the Interim Final Rule, the LCA form—whether completed using the ''form filler'' program, in typewriting, or in handwriting—will be submitted by employer applicants to one of the two ETA regional offices either by facsimile transmission (fax), which is preferred, or by mail or private carrier. The Interim Final Rule and the LCA form itself will so indicate and will provide the appropriate fax numbers. The Department anticipates that LCAs submitted by fax can be readily received and processed by the automated system, and that a response—approval or rejection—can be returned to the employer's sending FAX number (*i.e.*, the telephone number designated in the ''Return Fax Number'' block on the LCA form), usually within 48 hours of submission/receipt by ETA. For employer-applicants without the capacity to send the LCA by FAX and receive ETA's response to the employer-applicants' sending FAX machine, the

LCA may still be submitted by mail or other delivery in hard-copy paper form (either typewritten or handwritten) to the two ETA regional offices with jurisdiction Such non-FAX submissions will be processed by the ETA office by being faxed internally or scanned electronically into the automated system, and the ETA decision will be mailed to the submitter.

The automated processing system will electronically scan the incoming facsimile, extract the information contained in the LCA, record the information to a database, and—in most cases—make the appropriate determination to approve/certify or reject the application, with little intervention by system administrators. As under the current manually-operated system, the LCA will be approved/certified and faxed (or mailed) back to the submitter if the appropriate boxes are checked and the required information is provided on the form. If the LCA is incomplete or contains obvious inaccuracies, it will be rejected under the automated system as it is under the manually-operated system.

Comments are requested on the proposed electronic transmission system described and on the proposed form to be utilized.

C. What H–1B Worker Would be an ''Exempt H–1B Nonimmigrant''?

The ACWIA provisions concerning non-displacement and recruitment of U.S. workers do not apply where the only H–1B workers sought in the LCA at issue are ''exempt H–1B nonimmigrants.'' In addition, for a limited time after the ACWIA's enactment, determining whether the employer is H–1B-dependent does not include ''exempt'' H–1B workers. The ACWIA contains alternative definitions of ''exempt H–1B nonimmigrant'' as one ''who * * * receives wages (including cash bonuses and similar compensation) at an annual rate equal to at least $60,000; or * * * [who] has attained a master's or higher degree (or its equivalent) in a specialty related to the intended employment.''

The Department notes that the statutory language seems clear—an H–1B-dependent employer, or an employer found to have committed willful violations, is required to comply with the new attestation elements unless the only workers employed pursuant to the LCA are exempt workers. The non-displacement obligation, for example, applies for the period beginning 90 days before and ending 90 days after the filing of any H–1B petition supported by the LCA. The Department therefore reads the statute as requiring that an employer which uses an LCA in support of a petition for any non-exempt worker must comply with the new attestations with respect to all of its H–1B nonimmigrants employed pursuant to the LCA, even the exempt H–1B nonimmigrants.

The Department recognizes that employers commonly apply for multiple positions, and often for multiple locations, on the same LCA. Further, the Department recognizes that when an employer recruits U.S. workers, it often cannot know whether in fact the H–1B worker for whom it eventually petitions will qualify as exempt or non-exempt, since it is not uncommon for both exempt and non-exempt workers to be qualified for the same job. In any event, the Department points out that an H–1B-dependent (or willful violating) employer is free to file separate LCAs for its exempt and non-exempt workers, thereby obviating the requirement of complying with the new attestation elements for its exempt workers.

Determinations as to whether or not H–1B workers meet the requirements necessary to be classified as exempt H–1B nonimmigrants will be made initially by the Immigration and Naturalization Service (INS) in the course of adjudicating the petitions filed on behalf of H–1B nonimmigrants by employers. Employers should maintain, in the public access file, a copy of the INS determinations with the petitions approved for exempt H–1B workers. In the event of an investigation, it is anticipated that considerable weight will be given to INS' determinations that H–1B nonimmigrants, based on the educational attainments of the workers, were ''exempt'' since INS has considerable experience in evaluating the educational qualifications of aliens. However, with respect to H–1B workers claimed to be exempt on the basis of annual wages, employers will be expected in the event of an investigation to be able to document that such H–1B nonimmigrants received sufficient pay to satisfy the statutory wage ''floor'' of $60,000.

The Department seeks comments on this proposed regulation, and on any other related matter including but not limited to the following questions.

1. How Would the $60,000 Annual Rate be Determined?

The ACWIA sets the wage ''floor'' for an ''exempt'' H–1B nonimmigrant at $60,000 annually, which is to include ''cash bonuses and similar compensation.'' In order to ensure that this statutory standard is in fact met, the Department is of the view that this standard should be interpreted consistent with the existing DOL regulations for determining if an employer has satisfied its other wage obligations under the H–1B program (20 CFR 655.731(c)(3)). Future (*i.e.,* unpaid but to-be-paid) cash bonuses and similar compensation would be ''counted'' toward the required wage if their payment is assured, but not if they are conditional or contingent on some event such as the employer's annual profits (unless the employer guarantees that the worker will receive payment of at least $60,000 per year, in the event the bonus contingency is not met). In addition, such bonuses and compensation are to be paid ''cash in hand, free and clear, when due * * *,'' meaning that they must have readily determinable market value, be readily convertible to cash tender, and be received by the worker when due (which must be within the year for which the employer wants to ''count'' the compensation).

Similarly, in assessing payment to an H–1B nonimmigrant claimed to be ''exempt,'' the Department interprets the statutory language ''* * * receives wages (including cash bonuses and similar compensation) at an annual rate equal to at least $60,000; * * *'' to mean that the worker actually receives the $60,000 compensation in the year. Therefore, an H–1B nonimmigrant working part-time, whose actual annual compensation is less than $60,000, would not qualify as exempt on this basis, even if the worker's earnings, if projected to a full-time work schedule, would theoretically exceed $60,000 in a year.

The Department seeks comments on this proposal and any alternative approaches that would ensure the $60,000 wage standard for ''exempt'' workers would be met.

2. How Would the ''Equivalent'' of a Master's or Higher Degree be Determined?

The second definition of ''exempt H–1B nonimmigrant'' requires that the nonimmigrant ''has attained a master's or higher degree (or its equivalent) in a specialty related to the intended employment.'' Based on the language of this provision, the Department and the INS are of the view that work experience cannot be converted to the ''equivalent'' of an academic degree at the master's level or higher. The ACWIA's language differs from INA section 214(i) (8 U.S.C. 1184(i)), which explicitly authorizes a ''time equivalency'' approach. Section 214(i) provides that one of the ways to meet the requirements of a bachelor's or higher degree (or its equivalent) is by experience in the specialty equivalent to

the completion of such a degree and ''recognition of expertise in the specialty through progressively responsible positions relating to the specialty.'' The contrast between these INA provisions demonstrates that when Congress intended to authorize a ''time equivalency,'' such authorization was expressly stated. Further, the statement of one of the sponsors of the legislation shows the intent of Congress: ''the term 'or its equivalent' refers only to an equivalent foreign degree. Any amount of on-the-job experience does not qualify as the equivalent of an advanced degree.'' (144 Cong. Rec. H8571–05, H8584, Sept. 24, 1998, remarks of Rep. Smith). The Department's proposed regulation, therefore, does not allow a work experience equivalency and recognizes only those foreign academic degrees as would be equivalent to a master's or higher degree in the U.S.

The Department is consulting with the INS on this matter, and will work in close cooperation with that agency in developing regulations. As indicated above, the Department will give considerable weight to INS determinations concerning the academic credentials of H–1B nonimmigrants who are claimed to be ''exempt.'' Employers should note that INS' review of academic credentials for its determination on ''exempt H–1B nonimmigrants'' is distinct from its review of academic credentials for its determination on ''specialty occupations'' under Section 214(i) of the INA and 8 CFR 214.2(h)(4).

The Department seeks comments on this regulatory proposal, and on any other or alternative interpretations of the ''equivalency'' provision.

3. How is ''a Specialty Related to the Intended Employment'' Defined?

The H–1B nonimmigrant who holds an advanced academic degree would be ''exempt'' only if that degree is in ''a specialty related to the intended employment.'' The Department proposes to make it clear that, in order for the degree specialty to be sufficiently ''related'' to the employment, the specialty must be generally accepted in the industry or occupation as an appropriate or necessary credential or skill for the person who undertakes the employment in question. Any ''specialty'' which is not generally accepted as appropriate or necessary to the employment would not be sufficiently ''related'' to afford the H–1B worker status as an ''exempt H–1B nonimmigrant.''

The Department is consulting with the INS on this matter, and will work in close cooperation with that agency in developing regulations. As indicated above, the Department will give considerable weight to INS determinations concerning the academic credentials of H–1B nonimmigrants who are claimed to be ''exempt.'' Again, employers should note that INS' review of academic credentials for its determination on ''exempt H–1B nonimmigrants'' is distinct from its review of academic credentials for its determination on ''specialty occupations'' under Section 214(i) of the INA and 8 CFR 214.2(h)(4).

The Department seeks comments on this regulatory proposal, and on any other or alternative interpretations of the ''related'' provision.

4. Should the LCA be Modified to Identify Whether it Will be Used in Support of Exempt and/or Non-Exempt H–1B Nonimmigrants?

The ACWIA provides that ''[a]n application is not described in this clause [i.e., is not subject to the new attestation requirements] if the only H–1B nonimmigrants sought in the application are exempt nonimmigrants.'' The Department is considering whether an employer's intention to use the attestation for exempt and/or non-exempt H–1B nonimmigrants should be indicated on the LCA, or whether this issue should be addressed in some other way. The Department recognizes that employers may wish to use separate LCAs for exempt and non-exempt H–1B workers, so they would not be required to comply with the attestations with respect to any exempt H–1B workers. As explained in the introductory discussion, the statutory language seems to require that an employer which initially believed its LCA would be used only for exempt H–1B nonimmigrants would have been obliged to comply with the attestations with respect to all of its H–1B workers under the LCA—exempt and non-exempt—if it later used that LCA in support of a petition for any non-exempt worker.

The Department therefore considered whether there would be any advantage to requiring such separate attestations. The Department is aware, however, that for many occupations, such as in information technology, two different workers might both be qualified for the same job, but because of education, for example, one might be exempt and another non-exempt. Therefore an employer might not know in advance whether the worker will be exempt.

At the same time, the Department believes it is important than an H–1B-dependent employer which intends to use the LCA only for exempt H–1B workers attest that the LCA will only be used to petition for such workers. The INS has made this request so as to allow both INS and the Department to know for which H–1B workers the ''exempt'' status must be ascertained. The Department therefore proposes to require such an attestation on the LCA. Of course, this requirement would not prevent an H–1B-dependent employer from either using separate LCAs for its exempt and non-exempt workers, or using one LCA for all H–1B workers (both exempt and non-exempt) and complying with the new attestation elements for all such workers.

Comments are sought on this proposed approach and on any other alternatives.

D. What Requirements Apply Regarding no ''Displacement'' of U.S. Workers Under the ACWIA?

The ACWIA imposes new obligations on an H–1B-dependent employer (see discussion in items A and B, above) and an employer found to have committed willful violations within the 5 years preceding the filing of an LCA (beginning on or after the date of the ACWIA's enactment). Such an employer is prohibited from ''displacing'' a U.S. worker who is ''employed by the employer'' or is employed by some other employer at whose worksite the sponsoring employer places an H–1B nonimmigrant where there are ''indicia of employment'' between the H–1B worker and that other employer. The prohibition on displacement within the employer's own workforce applies for 90 days before and 90 days after the date of filing of any H–1B petition based on the LCA. The prohibition on ''secondary'' displacement, at another employer's worksite, applies for 90 days before and 90 days after the placement of H–1B worker(s) at the worksite. These prohibitions do not apply to the placement of ''exempt'' H–1B workers, if the employer's LCA involves only ''exempt'' nonimmigrants. (See discussion in item C, above).

The Department recognizes that the non-displacement provisions in the ACWIA raise several issues, and proposes regulatory provisions on each of the following matters. The Department seeks comments on all of these proposed provisions, and on any other related matters.

1. What Constitutes ''Employed by the Employer,'' for Purposes of Prohibiting a Covered Employer From Displacing U.S. Workers in its Own Workforce?

The ACWIA provides that a U.S. worker ''employed by the employer'' is protected from displacement by that employer's H–1B workers. However, the

ACWIA contains no definition of the phrase ''employed by the employer.'' In this circumstance, where Congress has not specified a legal standard for identifying the existence of an employment relationship, the Department is of the view that Supreme Court precedent requires the application of ''common law'' standards in analyzing a particular situation to determine whether an employment relationship exists. *Nationwide Mutual Insurance Co.* v. *Darden,* 503 U.S. 318 (1992). *See Community for Creative Non-Violence* v. *Reid,* 490 U.S. 730 (1989). Mindful of the Supreme Court's teaching that since the common-law test contains ''no shorthand formula or magic phrase that can be applied to find the answer, * * * all of the incidents of the relationship must be assessed and weighed with no one factor being decisive'' (*NLRB* v. *United Ins. Co. of America,* 390 U.S. 254, 258 (1968)), the Department proposes regulatory language setting out factors that would indicate the existence of an employment relationship under the common law test. These factors would include:

- The firm or the client has the right to control when, where, and how the worker performs the job;
- The work does not require a high level of skill or expertise;
- The firm or the client rather than the worker furnishes the tools, materials, and equipment;
- The work is performed on the premises of the firm or the client;
- There is a continuing relationship between the worker and the firm or the client;
- The firm or the client has the right to assign additional projects to the worker;
- The firm or the client sets the hours of work and the duration of the job;
- The worker is paid by the hour, week, month or an annual salary, rather than for the agreed cost of performing a particular job;
- The worker does not hire or pay assistants;
- The work performed by the worker is part of the regular business (including governmental, educational, and non-profit operations) of the firm or the client;
- The firm or the client is itself in business;
- The worker is not engaged in his or her own distinct occupation or business;
- The firm or the client provides the worker with benefits such as insurance, leave, or workers' compensation;
- The worker is considered an employee of the firm or the client for tax purposes (*i.e.,* the entity withholds federal, state, and Social Security taxes);
- The firm or the client can discharge the worker; and
- The worker and the firm or client believe that they are creating an employer-employee relationship.

(Factors adapted from EEOC Policy Guidance on Contingent Workers, Notice No. 915.002, Dec. 3, 1997). The Department is aware that these analytical factors—all of which are drawn from the Supreme Court's decision in *Darden*—may be expressed somewhat differently. *See, e.g.,* Restatement (Second) of Agency § 220(2) (1958) (listing nonexhaustive criteria for identifying master-servant relationship); Rev. Run. 87–41, 1987–1 Cum. Bull. 296, 298–299 (providing 20 factors as guides in determining whether an individual qualifies as a common-law ''employee'' in various tax law contexts). The Department is also aware that some factors, such as the level of the worker's skill or expertise, have little relevance in the context of this program where, by the terms of the Act, all of the H–1B workers and similarly employed U.S. workers are skilled.

The Department recognizes that there are a number of legal standards—other than the common law test—for determining the existence of an employment relationship. For example, it would appear that the standard most analogous to the H–1B worker protection provisions would be that found in the Fair Labor Standards Act, which provides minimum wage and overtime wage protections to ''employees.'' In addition, there is some suggestion of a preference on the part of some Members of Congress for the use of the Internal Revenue Service standards for the identification of an employment relationship under the ACWIA provisions (*see* Cong. Rec. S12751, Oct. 21, 1998; remarks of Sen. Abraham). While the Department considers both the FLSA and tax standards (which contain some special exemptions from the common law test) to be inappropriate under this statute, in light of the Supreme Court precedents discussed above, the Department would carefully consider any comments which suggest and support these or other alternate tests for determining whether an employment relationship exists.

The Department seeks comments on the proposed regulation applying the common law standards, and on any other, related matters regarding the appropriate factors.

2. What Constitute ''Indicia of an Employment Relationship,'' for Purposes of the Prohibition on Secondary Displacement of U.S. Workers at Worksites Where the Sponsoring Employer Places H–1B Workers?

In a provision described herein as the ''secondary displacement prohibition,'' the ACWIA prohibits the displacement of U.S. workers employed by another (''secondary'') employer, if an H–1B-dependent employer (or willful violator) intends or seeks to place its own H–1B workers with that other employer in a situation where, among other things, there are ''indicia of an employment relationship between the nonimmigrant and such other employer.'' The Department, after careful consideration, has concluded that this term—''indicia of an employment relationship''—identifies a relationship which is less than an employment relationship but more than the H–1B worker's mere performance of duties at the secondary employer's worksite (such as being dispatched for a brief part of a work day to diagnose or repair equipment at that other employer's location). Further, the Department has concluded that, for purposes of clarity and consistency, the standards indicative of ''indicia of an employment relationship'' with the secondary employer should be consistent with and a sub-set of the criteria which are used in determining an employment relationship between the covered (or ''primary'') employer and its own U.S. workers for purposes of the displacement prohibition concerning such workers (*i.e.,* U.S. workers ''employed by the employer''). The Department considered proposing that indicia of employment would be found to exist wherever a certain number of these criteria are met, but does not believe such a quantitative standard to be appropriate since the determination requires consideration of all of the relevant facts of the relationship, with no single factor or set of factors decisive.

The Department reviewed the factors considered in determining employment relationship, as discussed above, and proposes a sub-set of those factors which it believes are most useful in determining whether indicia of employment are present in evaluating a placement at another company's worksite (here referred to as ''the client''). The sub-set does not include those factors which are relevant to determining whether a worker is an employee of any company (*e.g.* worker's skill level). Such factors do not seem relevant where the H–1B worker is an

acknowledged employee of some entity (*i.e.*, the company filing the LCA), and would virtually never arise in a secondary placement of the H–1B worker (*e.g.*, client's payment of wages and benefits to worker). The sub-set of factors the Department believes are relevant ''indicia of an employment relationship'' include:

- The client has the right to control when, where, and how the worker performs the job;
- The client furnishes the tools, materials, and equipment;
- The work is performed on the premises of the client;
- There is a continuing relationship between the worker and the client;
- The client has the right to assign additional projects to the worker;
- The client sets the hours of work and the duration of the job;
- The work performed by the worker is part of the regular business (including governmental, educational, and non-profit operations) of the client;
- The client is itself in business; and
- The client can discharge the worker from providing services to the client.

(*See* discussion in item D.1 above). The Department seeks comments on this regulatory standard, including the factors to be considered and the manner in which the factors might be applied or weighed.

The Department recognizes that alternative approaches may be available, such as some standard other than the common law factors, or having no regulatory standard. The Department seeks comments on any such alternative approaches, and on any other, related matters including, but not limited to, the possible contents and consequences of a regulation which would apply different standards.

3. What Constitutes an ''Essentially Equivalent Job,'' for Purposes of the Non-Displacement Provisions of ACWIA?

The ACWIA definition of the prohibited displacement of a U.S. worker states, in part, that such displacement is ''lay[ing] off the [U.S.] worker from a job that is essentially the equivalent of the job for which the nonimmigrant or nonimmigrants is or are sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.'' This definition, thus, requires three comparisons to determine whether displacement occurs: job responsibilities; workers; and locations.

The Department is of the view that the job responsibility comparison must focus on the core elements of and competencies for the job, such as supervisory duties, or design and engineering functions, or budget and financial accountability. Peripheral, non-essential duties that could be tailored to the particular abilities of the individual workers would not be determinative in the comparison of the jobs. In other words, the job responsibilities must be similar and both workers capable of performing those duties. In this connection, the Department believes it may be useful to utilize standards under the Equal Pay Act (29 U.S.C. 206(d)(1)) for determining the essential equivalence of jobs. These standards focus on actual job duties and responsibilities, rather than a comparison of sometimes artificial job titles and position descriptions, and recognizes that precise overlap between jobs is not necessary to achieve essential equivalence (*see* the regulations at 29 CFR 1620.13 et seq.). Like the Equal Pay Act, ACWIA's remedial purpose could be thwarted by requiring a match of insubstantial aspects of jobs as a condition for determining their equivalence. The Department therefore seeks comments on the appropriateness of adapting these standards to ACWIA.

As to the qualifications and experience of the workers, the Department considers the comparison to be confined to matters which are normal and customary for the job, and which are necessary for successful performance of the job. Thus, while it would be appropriate to compare whether the workers in question are qualified by virtue of education, skills and experience to perform the job, it would not be appropriate to compare their relative ages or their ethnic identities, nor whether they are exactly alike—which would virtually never be the case—in their educational background and work experience. For example, an H–1B worker who is ''over-qualified'' for a particular job could still ''displace'' a U.S. worker.

The area of employment is defined in ACWIA as ''the area within normal commuting distance of the worksite or physical location where the work of the H–1B nonimmigrant is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.'' This statutory definition is much the same as the Department's current regulatory definition of ''area of intended employment'' for prevailing wage purposes (20 CFR 655.715). (See item P.5, below.)

The Department proposes regulatory language to implement these provisions and seeks comments on these and any other related matters.

4. How Does the ACWIA Distinguish Between a Prohibited ''Lay Off'' and a Permissible Termination of an Employment Relationship?

The ACWIA distinguishes a ''lay off'' of a U.S. worker from certain other circumstances in which a worker's employment relationship may end. The ACWIA's non-displacement prohibition applies only to a ''lay off.''

The ACWIA specifies that, even though an H–1B worker may be placed in a job similar to one formerly held by a U.S. worker, no ''displacement'' or ''lay off'' is considered to have occurred if the U.S. worker left the job through ''voluntary departure or voluntary retirement.'' As a logical and obvious matter, the requirement of ''voluntariness'' is crucial to the effectiveness of this provision in assuring appropriate protections of U.S. workers' jobs in situations where nonimmigrants are being hired. The Department takes the view that the totality of the circumstances must be considered in assessing whether a U.S. worker's departure was ''voluntary.'' Therefore, the Department will look to well-established principles concerning ''constructive discharge'' of workers who are pressured to leave employment (e.g., a resignation letter would not be conclusive proof of ''voluntariness'' where other information indicates coercion). The Department proposes a regulation that reflects this fair, common sense view of ''voluntary departure or voluntary retirement.''

The ACWIA also specifies that no ''lay off'' is considered to have occurred where the U.S. worker's loss of employment is caused by the expiration of a grant or contract, other than a temporary employment contract entered into in order to evade the employer's obligations under the attestation. The Department believes that this language was designed to address the common situation where scientists and other academic personnel at universities are expressly hired to work under a contract or grant from another institution. Where such funding is lost, and the worker is not replaced because the project funded by the contract or grant ends, there would be no lay off within the meaning of the ACWIA. Similarly, a staffing firm or other commercial firm may hire an employee expressly to work on a specific project under a contract it has

obtained from another entity. If the contract project ends and is not renewed, and the employer does not have a practice of then moving its employees to work under other contracts, or placing its employees on a call-back list or its equivalent, but rather terminates the employment relationship for lack of work, there would be no lay off. The Department does not believe, however, that this ACWIA provision applies to the common situation where a staffing firm, which places employees at other businesses, does not hire employees for a specific client contract, and (upon the expiration, termination, or loss of a client contract) ordinarily would move its employees to perform work under a different contract or on a different project. In such a situation, the Department may find a displacement has occurred if an employer terminates employment of its U.S. workers and hires H–1B workers to perform essentially the same job under a different contract at a different worksite in the same area of employment. The Department notes that the ACWIA provision expressly excludes temporary employment contracts entered into to evade the employer's obligations. The Department intends to closely scrutinize situations under commercial contracts and grants, as well as employment contracts, where it appears that such evasion may be occurring. The Department recognizes, however, that there are situations where employment contracts, like the commercial contracts described above, are excluded from the Act's definition of ''lays off.'' Such situations might include, for example, visiting professors who are hired for a semester or a year because of their special expertise. The expiration of such a contract would not constitute a ''lay off'' of the U.S. worker, unless the circumstances showed some subterfuge or contrivance by the employer to avoid the ACWIA prohibition.

The Department seeks comments on this proposed approach, and on any related matters.

5. What Constitutes ''a Similar Employment Opportunity'' for a U.S. Worker, Which—if Offered—Would Not Constitute a Prohibited ''Lay Off'' or Displacement of That Worker?

The ACWIA further provides that, even though an H–1B worker is placed in a job formerly held by a U.S. worker, no ''displacement'' or ''lay off'' is considered to have occurred if the U.S. worker was first offered but refused ''a similar employment opportunity with the same employer.'' This provision thus allows an employer an affirmative defense to its displacement of a U.S. worker if the employer can establish that it offered a *bona fide* transfer opportunity to the worker. The Department interprets the ACWIA language to require not just that the U.S. worker be offered another job with a similar title, but that the offer must involve a similar opportunity in terms such as a similar level of authority and responsibility, a similar opportunity for advancement within the organization, similar tenure and work scheduling.

The Department proposes a regulation to reflect this statutory requirement of ''opportunity'' for the U.S. worker who has lost a job. At a minimum the Department believes that an offer of a ''similar employment opportunity'' must be a *bona fide* offer, rather than an offer designed so as to induce the employee to refuse, or with the expectation that the employee will refuse the offer.

The Department seeks comments on this proposed regulatory provision, and on any other related matters.

6. What Constitutes ''Equivalent or Higher Compensation and Benefits'' for a U.S. Worker, for Purposes of the Other Job Offer to That Worker so as to Not Constitute a Prohibited ''Lay Off'' or Displacement?

The ACWIA provides that no prohibited ''lay off'' of a discharged U.S. worker has occurred, if the U.S. worker is offered another employment opportunity with the same employer ''at equivalent or higher compensation and benefits than the position from which the employee was discharged.'' It would appear obvious that an ''opportunity'' could not be considered to provide ''equivalent or higher compensation and benefits'' if that ''opportunity'' would provide the worker a lower disposable income or would require the worker to incur expenses that drive down his/her financial standing. By specifying ''equivalent or higher'' pay and benefits, Congress must have intended that the U.S. worker be offered a positive, rather than negative, ''employment opportunity.'' In this regard, one of the sponsors of the ACWIA compromise legislation stated that ''[t]he intent of Congress is that the 'similar employment opportunity with the same employer at equivalent or higher compensation and benefits' would be a meaningful offer. It is Congress' intent that an employer should not be able to evade liability for a violation of the displacement attestation because an offer of an alternative employment opportunity was made without considerations such as relocation expenses and cost of living differentials if the alternative position was in a different geographical location.'' (*See* Cong. Rec. E2324, Nov. 12, 1998, remarks of Rep. Smith). Assuming the regulations provide that a ''similar employment opportunity'' may include a transfer to another commuting area, the Department takes the position that an alternative ''opportunity'' offered to the U.S. worker must take into consideration matters such as cost of living differentials and relocation expenses (*e.g.*, a New York City ''opportunity'' offered to a worker ''laid off'' in Kansas City would provide a wage adjustment from the Kansas City pay scale and would include relocation costs). The Department is also considering adapting relevant provisions of regulations defining equivalent compensation and benefits under the Equal Pay Act regulations (*see* item D.3, above) and of the Family and Medical Leave Act regulations, 29 CFR 825.215(c)–(d). The Department seeks comments on this proposal and on any related matters that encompass this concept.

7. What is Required of an H–1B-dependent (or Willful Violator) Employer Which Seeks Information About Displacement or Potential Displacement of U.S. Workers at a Second Employer's Worksite?

The ACWIA's secondary displacement prohibition requires that certain H–1B employers (H–1B-dependent; willful violator) not place any H–1B worker at another employer's worksite (to work under ''indicia of employment'' with such secondary employer), ''unless the [H–1B] employer has inquired of the other employer as to whether, and has no knowledge that ... the other employer has not displaced or intends to displace a United States worker employed by the other employer'' within the period of 90 days before and 90 days after the H–1B worker's placement at that worksite. The ACWIA further specifies (in the enforcement and penalties provisions) that the H–1B employer may be debarred for a secondary displacement ''only if the Secretary of Labor found that such placing employer ... knew or had reason to know of such displacement at the time of the placement of the nonimmigrant with the other employer.'' The language and structure of these provisions demonstrates that Congress intended for the H–1B employer to take proactive steps to ascertain whether placement of H–1B workers would correspond with the lay off of similarly-employed U.S. workers. In enacting this provision, Congress clearly intended that the employer make a reasonable inquiry and

give due regard to available information. Simply making a *pro forma* inquiry would not insulate a covered employer from liability should the secondary employer displace a U.S. worker from a similar job which would be performed by an H–1B worker.

The Department recognizes that the ACWIA obligation concerning ''secondary displacement'' could easily be subverted if a placing H–1B employer were merely to make a *pro forma* inquiry and rely on a *pro forma* reply. Thus, in order to assure that the purposes of the statute are achieved, the Department proposes to develop a regulatory provision to require that the H–1B employer make a reasonable minimal effort to inquire about potential secondary displacement. The Department believes that a covered H–1B employer may demonstrate such effort through a variety of methods that include, but are not limited to, the following:

- Securing and retaining a written assurance from the secondary employer that it has not and does not intend to displace a similarly-employed U.S. worker within the period 90 days before and 90 days after the placement of an H–1B worker at the work site; or
- Preparing and retaining a note to the file, prepared at the same time or promptly after receiving the secondary employer's oral statement (including the substance of the conversation, the date of the communication, and the names of the individuals involved) that the secondary employer has not and does not intend to displace a similarly-employed U.S. worker within the period 90 days before and 90 days after the placement of an H–1B worker at the work site; or
- Including a secondary displacement clause in the contract between the H–1B employer and the secondary employer, whereby the secondary employer would agree that it has not and will not displace similarly-employed U.S. workers at the work site at any time within the period 90 days before and 90 days after the placement of an H–1B worker.

Further, even with such assurance, a placing H–1B employer should not be able to ignore other information that comes to its attention—such as newspaper reports of relevant lay-offs by the secondary employer—if such information becomes available before its placement of H–1B workers with that other employer. Under such circumstances, the employer would be expected to recontact the secondary employer and receive credible assurances that no lay offs are planned or have occurred in the applicable time frame.

The Department seeks comments on the methods described above, and any other methods for demonstrating that a placing employer has made a reasonable inquiry concerning potential secondary displacement of U.S. workers.

8. What Documentation Will be Required of Employers About ACWIA's Non-Displacement Provisions?

The ACWIA prohibits the small affected class of H–1B employers—H–1B-dependent or willful violators—from hiring H–1B workers if their doing so would displace similar U.S. workers from an essentially equivalent job in the same area of employment. The employer will not be considered to have displaced the U.S. worker if that worker left voluntarily, was dismissed for a valid reason, or turned down the employer's offer of a similar employment opportunity with equivalent or higher compensation and benefits (as previously discussed).

The Department proposes to require that covered H–1B employers retain certain documentation with respect to each U.S. worker in the same locality and same occupation as any H–1B nonimmigrants hired, and who left its employ in the period 90 days before or after the employer's petition for the H–1B worker(s). In addition, because an employer generally takes action to effectuate a layoff at a point before a worker's employment terminates, such documentation would be required for any such employee for whom the employer has taken any action during the period 90 days before or after the petition to cause the employee's termination (*e.g.*, a notice of future termination of the employee's job). For all such employees, the Department proposes that covered H–1B employers maintain the name, last-known mailing address, occupational title and job description, as well as any documentation concerning the employee's experience and qualifications, and principal assignments. In addition, the Department proposes that the employer maintain copies of all documents concerning the departure of such employees, such as notification by the employer of termination of employment prepared by the employer or the employee and any responses thereto, evaluations of the employee's job performance, etc. Finally, the employer would be required to retain copies of the terms of any offers of similar employment to such U.S. workers and the employee's response thereto. Because EEOC regulations (29 CFR 1602.14) currently require retention of all personnel or employment records, the Department does not believe that this requirement in the H–1B regulation would impose any new burden on employers.

The Department seeks comments on this proposed regulation, and on any related matters.

E. What Requirements Does the ACWIA Impose Regarding Recruitment of U.S. Workers, and Which Employers are Subject to Those Requirements?

The ACWIA requires that an H–1B-dependent employer (or employer found by DOL to have committed willful H–1B violations within a 5-year period) take ''good faith steps to recruit, in the United States using procedures that meet industry-wide standards and offering compensation that is at least as great as that required to be offered to H–1B nonimmigrants . . ., United States workers for the job for which the nonimmigrant or nonimmigrants is or are sought.'' The Department is charged with enforcing this obligation, while the Attorney General administers a special arbitration process to address complaints regarding an H–1B employer's companion obligation to ''offer the job to any United States worker who applies and is equally or better qualified for the job for which the nonimmigrant or nonimmigrants is or are sought.'' The ACWIA further provides that ''[n]othing in subparagraph (G) [this new attestation element on recruitment] shall be construed to prohibit an employer from using legitimate selection criteria relevant to the job that are normal or customary to the type of job involved, so long as such criteria are not applied in a discriminatory manner.'' An H–1B employer is not subject to these recruitment requirements if its labor condition application involves only ''exempt'' H–1B workers, or if the H–1B worker has ''extraordinary ability,'' or is an ''outstanding professor or researcher'' or a ''multinational manager or executive,'' as defined in section 203(b)(1)of the INA.

It should be noted that the statutory attestation language requires the employer to affirm the statement that, ''prior to filing the application—[the employer] has taken good faith steps to recruit. . .'' This language appears to be based on the presumption that employers file LCAs for individual workers at the time the need for that worker arises. In fact, however, employers may and often do file one LCA for many workers and use that LCA into the future in support of H–1B petitions filed when the actual

employment need does arise. For example, an LCA filed for 100 computer programmers may be used up to 100 times over a period of months or even years (through the three year validity period) in support of separate petitions for individual workers.

Given this common practice by employers, it is not reasonable to assume Congressional intent to require a separate LCA for each worker, particularly in light of the existing regulatory provision allowing the listing of multiple positions and work locations on a single application, which was not altered by ACWIA. At the same time, it is not reasonable to assume that Congress expects employers using the H–1B program (in this case, only H–1B-dependent employers and willful violators) to be able to attest—on the LCA filing date—that they have already recruited in good faith in the U.S. for every job for which they may wish to petition for H–1B workers over the three-year life of the LCA, and further, that they already have offered that job to every equally or better qualified U.S. worker who applies. As a practical matter, it would be virtually impossible for employers to be able to conduct such recruitment, since they have not yet identified every job opportunity which might arise at some point in the LCA's three-year validity period, for which the employer might wish to file an H–1B petition for an H–1B worker. In this context, the Department believes that the ''good faith recruitment'' attestation must be read, interpreted and applied to mean that the employer promises—and agrees to be held accountable—that it has or will recruit with respect to any job opportunity for which the application is used, whether that recruitment occurs before or after the application is filed (if the application is to be used in support of multiple petitions for future workers). The Department invites comments on this approach and any alternative suggestions for how to appropriately balance employers' practices under the program with their good faith recruitment obligations in the context of the statutory language on this labor condition statement.

The Department recognizes that the ACWIA requirements for a small sub-set of H–1B employers to recruit U.S. workers present several points on which views might differ. Therefore, the Department proposes a regulation addressing the following matters and seeks comments on all of these points, as well as on any other related matters.

1. How are ''Industry-wide Standards'' for Recruitment to be Identified?

The benchmark for minimal U.S. worker recruitment under the ACWIA is ''industry-wide'' procedures. This provision allows employers to use normal recruiting practices which are common among similar employers in their industry in the United States (even though, in some cases at least, these have been demonstrably unsuccessful by virtue of the employer seeking access to foreign labor markets). The statute does not require employers to comply with any specific recruitment regimen or practice, nor does the Department believe it is authorized to prescribe any explicit regimen. In this regard, the Department is of the view that the H–1B-dependent employer should look, in particular, to those recruitment strategies by which employers in an industry have successfully recruited U.S. workers; through this rulemaking proposal, the Department solicits and will consider the views of major industry associations, employee organizations, and other interest groups concerning successful recruitment practices and strategies.

The Department is considering a number of options regarding the type or level of recruitment necessary, ranging from prescribing specific required recruitment efforts to simply allowing employers to pursue what they perceive to be industry standard procedures.

There are a number of recognized methods for successfully soliciting U.S. worker applicants, including: advertising in general distribution publications, trade or professional journals, or special interest (*e.g.*, ethnic-oriented) publications; America's Job Bank or other Internet sites advertising job vacancies; outreach to trade or professional associations; use of public and/or private employment agencies, referral agencies, or ''headhunters;'' outreach to colleges, universities, community/junior colleges and business/trade schools; job fairs; contact with labor unions; and recruitment, development or promotion from within an employer's organization (or its competitors), including workers who may have been displaced from similar jobs. The Department's expectation is that good faith recruitment will ordinarily involve several of these methods of solicitation, both passive (where potential applicants find their way to an employer's job announcements, such as to advertisements in publications and the Internet) and active (where the employer takes proactive steps to identify and get information about it's job openings into the hands of potential applicants, such as through job fairs, outreach at universities, use of ''headhunters,'' and providing training to incumbent employees in the employer's organization).

The Department is considering whether the regulation should recognize that if an employer uses at least three of these recognized solicitation tools (at least one or two of which are active), it will be presumed to meet the ''good faith'' standard in this regard. This approach would, in effect, create a presumption for employers which do not wish to demonstrate industry practice for recruitment. An employer which did not use at least three of these approaches could still demonstrate its ''good faith'' by showing that its recruitment methods comport with the industry norm, as discussed below. However, the Department believes that good faith recruitment must, at a minimum, involve solicitation efforts which include advertising in relevant and appropriate print media or the Internet (where common in the industry), in publications and at facilities commonly used by the industry (*e.g.,* higher education institutions), as well as solicitation of U.S. workers within the employer's organization. Of course, an employer would have to use good faith in the recruitment conducted. For example, an employer would be expected to advertise for a reasonable period of time, and would be expected to do so in those publications and to attend those job fairs which would ordinarily be read or attended by the types of workers being recruited. The Department seeks comments as to whether this approach offers an effective means of implementing the Act's objectives, including specifically whether such a presumption should be established and, if so, whether it should involve at least three recognized solicitation tools or some other number.

The Department considers it important that there be a general recognition that good faith recruitment must involve some active methods of solicitation, rather than just passive methods such as posting job announcements at the employer's work site(s) or on its Internet web page. The Department's view is that ''industry-wide standards'' do not mean the lowest common denominator—*i.e.*, the minimum recruitment or least effective methods in attracting U.S. workers used by companies in an industry. Rather, solicitation must be at a level and through methods and media which are normal, common or prevailing in an industry—the ''standard''—including at

least the medium most prevalently used in the industry and employing those strategies that have been shown to be successfully used by employers in an industry to recruit U.S. workers.

The Department believes that, as a general matter, the statutory intent of the recruitment attestation is best effectuated if employers are required to utilize the recruitment methods of the set of employers which primarily compete for the same types of workers as those who are the subjects of the H–1B petitions to be filed pursuant to the LCA. For example, a hospital, university, or computer software development firm would be required to use the standards utilized by the health care, academic, or information technology industries, respectively, in hiring workers in the occupations in question. Similarly, a staffing firm, which places its workers at job sites of other employers, would be required to utilize the standards of the industry which primarily employs such workers—*e.g.*, the health care industry, if the staffing firm is placing physical therapists (whether in hospitals, nursing homes, or private homes); or the information technology industry, if the staffing firm is placing computer programmers, software engineers, or other such workers. These firms are competing for the same kind of workers and the ''industry standard'' should recognize that fact and not reward lack of success in attracting U.S. workers by some sectors of an industry.

The Department seeks comments on this proposed regulation and on any other related matters, including any possible alternative regulatory standards and their contents and consequences.

2. What Constitute ''Good Faith Steps'' in Recruitment?

The essential requirement for good faith recruitment, as mandated by the ACWIA, is that employers maintain a fair and level playing field for all applicants and be able to show that they have not skewed their recruitment process against U.S. workers. The Department believes that ''good faith'' recruitment does not involve only the steps taken to communicate/advertise job openings and solicit applications (ending upon the employer's receipt of the applications), but also encompasses pre-selection treatment of the applicants. The level playing field for U.S. applicants mandated by the ACWIA cannot be guaranteed if only those steps taken to find potential applicants and solicit applications are considered; the pre-selection treatment of applicants must also be considered if good faith is to be assured. For example, an application screening process tailored to favor H–1B workers and bypass U.S. applicants would represent as much a violation of the good faith recruitment requirement as a failure to seek U.S. applicants in the first place.

The Department does not propose any specific regimen or practice for pre-selection treatment of applications and applicants. However, in circumstances where H–1B employers are demonstrably unsuccessful (or less successful than their competitors) in hiring U.S. workers, the Department intends to scrutinize the recruitment process, including pre-selection treatment, to insure that U.S. workers are given a fair chance for consideration for a job, rather than being ignored or rejected through some tailored screening process based on an employer's preferences or prejudices with respect to the make up of its workforce. Examples of such processes could include a practice of interviewing H–1B applicants but not U.S. applicants with equivalent qualifications, or assigning different staff to the screening or interviewing of H–1B and U.S. applicants.

The Department solicits comments on this issue and the relevance of these examples in identifying less than ''good faith'' recruitment, and the existence of any other practices with a similar design or impact.

The Department is of the view that—as a practical matter—there may be little reason to examine the particulars of an employer's recruitment efforts if the results of those efforts amply demonstrate the employer's good faith in employing U.S. workers. Thus, the Department is considering whether to craft a presumption of good faith recruitment based on an employer's hiring of a significant number of U.S. workers and, thereby, accomplishing a significant reduction in the ratio of H–1B workers to U.S. workers in the employer's workforce. Of course, such a presumption would not affect an individual worker's claim that he/she was discriminated against in recruitment or otherwise, or an individual U.S. worker's complaint that he/she was equally or better qualified than an H–1B worker and was not given an offer of employment (a matter which is under the jurisdiction of the Department of Justice). The Department seeks comments on the possibility, the contents, and the consequences of such a presumption.

The Department's regulation will include notification of its intention to refer any potential violations of U.S. discrimination statutes revealed through this scrutiny to the appropriate enforcement agency.

In addition, the Department's regulation will inform employers that the assessment of ''good faith'' recruitment will be based on the whole recruitment process, but will not include an examination or ''second guessing'' of the work-related screening criteria or the hiring decision(s) with regard to any particular applicant(s) (a matter specifically assigned by the ACWIA to the Attorney General's procedures).

The Department seeks comments on this proposed regulation and on any other related matters.

3. How are ''Legitimate Selection Criteria Relevant to the Job That are Normal or Customary to the Type of Job Involved'' to be Identified and Documented?

In conducting the ACWIA-mandated ''good faith'' recruitment of U.S. workers, an affected H–1B employer is specifically authorized to apply ''legitimate selection criteria relevant to the job that are normal or customary to the type of job involved.'' This statutory standard, thus, has several parts. The criteria must be legitimate, which would exclude any criteria which would, in themselves, be violative of any applicable laws (*e.g.*, age, sex, race). The criteria must be relevant to the job, which would require a nexus between the criteria and the job's duties and responsibilities. And the criteria must be normal or customary to the type of job involved, which would be based on the practices and expectations of the industry rather than on the preferences of a particular employer. The Department considers that this requirement would be satisfied, for example, if the employer uses criteria taken from the North American Industrial Classification System (NAICS) being developed to replace the Standardized Occupational Classifications. With regard to selection standards, the language and purpose of the statute mandate that the employer is not to impose spurious hiring criteria that discriminate against U.S. applicants in favor of H–1B workers; such employer actions would subvert the obligation to hire an ''equally or better qualified'' U.S. worker. (*See* Cong. Rec. E2324, Nov. 12, 1998; Cong. Rec. S12751, Oct. 21, 1998).

In evaluating an employer's ''good faith'' recruitment in the pre-selection treatment of applicants and applications, the Department will limit its scrutiny of screening criteria (as opposed to processes) to those factors set forth in the law.

The Department is proposing a regulatory provision which informs the employer of these standards for acceptable hiring criteria. The Department seeks comments on this proposal and on any other related matters.

4. What Actions Would Constitute a Prohibited ''Discriminatory Manner'' of Recruitment?

In prohibiting the employer's application of otherwise-legitimate hiring criteria ''in a discriminatory manner,'' the ACWIA mandates that the employer conduct recruitment on a fair and level playing field for all applicants without skewing the recruitment process against U.S. workers. Obviously, the use of hiring criteria prohibited by any applicable discrimination law (*e.g.*, sex, race, age, national origin) would constitute a prohibited ''discriminatory'' recruitment. The Department is proposing a regulatory provision which will inform the employer of these basic standards, and that solicitation and pre-selection screening processes or criteria that are applied in a disparate manner—either between foreign and U.S. workers, or for those jobs where H–1B workers are involved (as opposed to those where they are not involved)—shall constitute discriminatory recruitment. Employers will also be alerted to the Department's compliance with the Congressional intent that ''[e]mployers who consistently fail to find U.S. workers to fill positions should receive the Department's special attention in this context of 'good faith' recruitment'' (*See* Cong. Rec. E2325, Nov. 12, 1998).

The Department seeks comments on this proposed regulation and on any other related matters.

5. What Documentation Would be Required of Employers?

In order for an employer to demonstrate that it has engaged in good faith recruitment of U.S. workers in accordance with industry-wide standards, and that the compensation offered is at least as great as that offered to H–1B nonimmigrants, an employer will be required to maintain certain documentation. The Department believes that it should not be necessary for the employer to retain actual copies of advertisements, etc., provided that it maintains documentation of the recruiting methods used, including the places and dates of the advertisements and postings or other recruitment methods used, the content of the advertisements and postings, and the compensation terms (if such are not included in the content of the advertisements and postings). In addition, the Department proposes that the employer's public disclosure file contain information summarizing the principal recruitment methods used and the time frame in which such recruitment was conducted.

The Department requests comments on how employers can and should determine industry-wide standards, for example, by obtaining credible evidence such as trade organization surveys, studies by consultative groups, or a statement from a trade organization regarding the industry norm(s). The Department also seeks comments on how to make the employer's determination available for public disclosure to U.S. workers and others.

In order to ensure that good faith recruitment was conducted, the Department proposes that employers retain any documentation they have received or prepared concerning the consideration of applications by U.S. workers, such as copies of applications and/or related documents, test papers, rating forms, records regarding interviews, job offers, etc. As discussed above with regard to documentation on the non-displacement attestation element (*see* item D.8), the EEOC regulations already require that employers retain all personnel or employment records, and the Department therefore believes that this requirement in the H–1B regulation would create no new obligation for employers.

The Department seeks comments on this proposed regulation and on any other related matters, including any possible alternative recordkeeping requirements.

F. What is Required for ''Electronic Posting'' of Notice to Employees of the Employer's Intention to Employ H–1B Nonimmigrants?

The ACWIA modified the existing statutory requirement for worksite posting of notices (where there is no collective bargaining representative), to permit an H–1B employer to use electronic communication as an alternative to posting ''hard copy'' notices in conspicuous locations at the place of employment. In providing this alternative method for notification to affected workers, Congress in no way indicated an intention to reduce the effectiveness of the notice requirement which has been an element of the H–1B program from its inception. Thus, the ACWIA provision must be understood to mean that the electronically posted notices are readily available to the affected workers. An employer may accomplish this by any means it ordinarily uses to communicate with its workers about job vacancies or promotion opportunities, including through its ''home page'' or ''electronic bulletin board'' to employees who have, as a practical matter, direct access to the home page or electronic bulletin board; or through E–Mail or an actively circulated electronic message such as the employer's newsletter. Where employees are not on the ''intranet'' which provides direct access to the home page or other electronic site but do have computer access readily available, the employer may provide notice to such workers by direct electronic communication such as E–Mail. If the employees lack such electronic access, notification may by provided by physical (''hard copy'') posting at the worksite.

The Department proposes regulatory language to convey this requirement, in a revision of the regulation on worksite notices (*see* item O.5, below, concerning republication for further comments). The Department seeks comments on this proposal, as well as on any alternative standard and its possible consequences for affected workers.

G. What Does the ACWIA Require of Employers Regarding Benefits to H–1B Nonimmigrants?

The ACWIA has added to the H–1B statute an express statement of the inherent obligation of all H–1B employers, under the first attestation element on wages and working conditions, ''to offer to an H–1B nonimmigrant, during the nonimmigrant's period of authorized employment, benefits and eligibility for benefits (including the opportunity to participate in health, life, disability, and other insurance plans; the opportunity to participate in retirement and savings plans; and cash bonuses and non-cash compensation, such as stock options (whether or not based on performance) on the same basis, and in accordance with the same criteria, as the employer offers to United States workers.'' The Department proposes regulatory provisions that implement this obligation regarding benefits. The Department seeks comments on the following and related matters.

1. What Does ''Same Basis and * * * Same Criteria'' Mean With Respect to an Employer's Treatment of U.S. Workers and H–1B Workers With Regard to Benefits?

In enacting an explicit statement of an employer's obligation to offer the H–1B worker benefits ''on the same basis, and in accordance with the same criteria, as the employer offers to [United States]

workers,'' Congress emphasized its intention that the wages and working conditions of U.S. workers not be adversely affected through the employment of H–1B workers at wages and fringe benefit levels less than those provided to U.S. workers. It is the Department's view that an employer's obligation to provide benefits to workers ''on the same basis, and in accordance with the same criteria, as the employers offers to [U.S.] workers'' requires that an employer offer to its H–1B workers the same benefit package as is offered to U.S. employees, and on the same basis as it is offered to U.S. workers. In other words, an employer may not provide more strict eligibility or participation requirements for H–1B workers. Of course, the benefits actually provided would not have to be identical, since, for example, one worker might choose family health insurance coverage, and another individual coverage, and yet another might choose not to have health benefits because he or she did not want to pay the employee's share of the premium in a co-pay package. The comparison of the ''basis'' and ''criteria'' should take into account the categories or types of workers to whom the benefits are being provided (*e.g.*, full-time workers compared to full-time workers; professional staff compared to professional staff); in other words, the comparison is between similarly-employed workers. The Department also seeks comments as to whether the ''same basis'' requirement would allow an employer to provide a different, but equivalent, package of benefits. The Department recognizes that determining the equivalency of benefits could be quite burdensome for both employers and the Department—particularly if the test were a qualitative evaluation of benefits, as distinguished from a comparison of the cost to employers.

The Department further understands that this provision would allow an employer to provide greater or additional benefits to H–1B workers than are offered to U.S. workers—that, with respect to H–1B workers, the requirement sets a benefits floor, but not a ceiling. This construction of the statutory language is consistent with the ACWIA directive that the fringe benefits obligation is imposed under attestation (1)(A), which embodies the concept that the prescribed wages and working conditions are minimums which must be afforded the H–1B workers.

The Department recognizes that an alternative interpretation of the benefits standard would interpret the ACWIA phrases ''same basis'' and ''same criteria'' to mean literally that they require the same (or possibly equivalent) treatment of similarly-situated U.S. and H–1B workers with respect to benefits. Such an interpretation would not permit more favorable treatment to either U.S. workers or H–1B nonimmigrants with regard to benefits.

The Department is also aware that there is a possibility of complications with respect to the ''benefits'' obligations of a U.S. employer that is part of a multinational corporate operation, particularly where an H–1B worker works in the U.S. for only a short period of time. The Department recognizes that under these circumstances it may not be practical for the U.S. employer to provide the H–1B worker with exactly the same benefits provided to its U.S. workers. The Department proposes to provide that while U.S. employers may cooperate with their corporate affiliate(s) in the H–1B worker's home country with regard to payment of wages and maintenance of benefits (such as that country's retirement system), the U.S. employer is responsible for compliance with the ACWIA requirements. This concern arises where a foreign affiliate of a petitioning employer is involved as the agent for payment of wages and provision of benefits to H–1B workers. The statutory obligations must be fully met in such instances. The ultimate responsibility for all employer obligations under this Act, including the provision of benefits to the H–1B worker at least equal to those offered its U.S. workers, must lie with the U.S. employer which brings nonimmigrant workers into the country. Ultimately, it is the U.S. employer, not the foreign subsidiary, pledging the H–1B worker a benefit package like that of its U.S. workers. The Department will look with particular care at circumstances involving a foreign subsidiary where there is an appearance of contrivance to avoid the sponsoring employer's obligation to provide at least equal wages and benefits to H–1B and U.S. workers. At the same time, the Department will carefully examine the circumstances in such cases to consider non-equivalent but nonetheless equitable benefits, including in light of the actual length of stay of the H–1B worker in the U.S.

Further, the Department proposes to modify section 655.732 of the existing regulations concerning fringe benefits pursuant to the ''working conditions'' attestation, to make it clear that an employer must provide the H–1B worker at least the fringe benefits and working conditions provided to the employer's U.S. workers. This modification would make it clear that the requirement that the employer provide working conditions that will not adversely affect the working conditions, including fringe benefits, of U.S. workers similarly employed necessarily requires consideration of similarly employed workers in the employer's own work force, as well as to prevailing conditions in the area of employment in some circumstances.

Finally, the Department seeks comments as to whether the Department should define ''benefits'' within the meaning of the ACWIA or simply give a list of examples. Although ''benefits'' are defined in various programs such as the Employee Retirement Income Security Act of 1974 and the Service Contract Act, the Department notes that the ACWIA provision on ''benefits'' clearly contemplates the inclusion of various forms of cash and non-cash compensation, such as bonuses and stock options, which are ordinarily considered wages.

The Department seeks comments on these matters, as well as on any other related matters.

2. How will Various Benefits be Evaluated, and What Documentation Would be Required?

The new statutory language mandates that all employers of H–1B nonimmigrants offer benefits to H–1B workers ''on the same basis and in accordance with the same criteria'' as offered to similarly-employed U.S. workers. To allow the Department to determine whether this statutory obligation has been met, the Department believes it will be necessary at a minimum that employers retain copies of fringe benefit plans and summary plan descriptions provided to workers, including all rules regarding eligibility and benefits, evidence of what benefits are actually provided to individual workers, and how costs are shared between employers and employees.

As discussed above, the Department is considering whether the statute will permit H–1B nonimmigrants to be provided different benefits or greater benefits, such as through an affiliate in their home country. If different benefits are provided, the Department believes an employer must be required to keep detailed information regarding the benefits provided to the H–1B worker and information to demonstrate the value of these benefits, as well as the benefits provided to U.S. workers. The Department solicits suggestions regarding exactly what records would be necessary for such determinations.

It is the Department's understanding that these records are currently kept for most fringe benefits, pursuant to the

requirements of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Service.

The Department seeks comments on this proposal and any related matters.

H. What Does the ACWIA Require of Employers Regarding Payment of Wages to H–1B Nonimmigrants for ''Nonproductive Time''?

In response to concerns and information about many situations in which H–1B workers were brought for employment in the United States but were then ''benched'' in a nonproductive status and paid little or none of the required wages, Congress enacted an explicit requirement—consistent with the Department's regulation—that the employer pay wages to an H–1B worker in ''nonproductive status'' in certain circumstances. This obligation is effective ''after the H–1B worker has entered into employment with the employer,'' but otherwise not later than 30 days after the worker's date of admission into the U.S. (if entering the country pursuant to the petition) or 60 days after the date the worker ''becomes eligible to work for the employer'' (if already present in the country when the petition is approved). The Department is considering whether the H–1B worker ''enters into employment'' when he first makes himself available for work, such as, for example, by reporting for orientation or training, or when he actually begins receiving orientation or training or otherwise performs work or comes under the control of his employer. Once the worker ''enters into employment'' (or after the 30 or 60 day period expires), the ''benching'' rules apply. Subject to the qualifications discussed below, an H–1B worker who is already present in the U.S. is considered by the Department to be ''eligible to work for the employer'' (and thus covered by the ''benching'' rules) upon the completion of the visa issuance process; matters such as the worker's obtaining a State license would not be relevant to this determination.

In a nutshell, the ''benching'' provisions forbid an employer paying an H–1B worker less than the required wage for nonproductive time, except in situations where the nonproductive status is due either to the worker's own initiative or to circumstances rendering the worker unable to work. The Department's enforcement experience has demonstrated that some employers bring H–1B workers into this country and then, for a variety of reasons, ''bench'' the workers in non-productive status and fail to pay them the wages attested on the LCA. Most frequently, such ''benching'' occurs where the employer lacks work to assign to the H–1B worker, or the worker is engaged in training or development activities (such as orientation in the employer's operations or studying for a licensing exam). It is entirely appropriate—as Congress recognized in the ACWIA enactment—for an employer to be prohibited from evading its wage obligations to such workers, who are under the employer's control and entitled to the LCA-attested wages. The ACWIA provisions recognize, however, that the employer should not be liable to pay wages for the worker's time which is nonproductive for reasons unattributable to the employer, such as the worker's hospitalization or requested leave-of-absence (consistent with the conditions related to the H–1B worker's maintenance of legal status in the U.S.).

There is no authorization for a reduction in the prescribed wage rate for any H–1B worker who is in nonproductive status due to employment-related conditions such as training, lack of assigned work, lack of a license, or other such reasons. The H–1B program was not intended and should not operate to provide an avenue for nonimmigrants to enter the U.S. and await work at the employer's choice or convenience. Instead, the H–1B program's purpose is to enable employers to employ fully-qualified nonimmigrants for whom employment opportunities currently exist. When the H–1B worker is ''benched'' and not being paid his/her required wages during nonproductive time, the worker is not permitted to be employed by any other employer (indeed, such employment would expose both the worker and the other employer to INS sanctions). The H–1B worker who is ''benched'' is without any legal means of support in this country. Thus, an H–1B worker affected by a temporary reduction in force or a temporary shut-down of the employer's operations could not accept any other employment (except with an LCA-certified employer who files a petition for the worker, or with another employer able to provide some other adjustment of the nonimmigrant's status under the INA). In contrast, U.S. workers in a reduction in force or temporary shut-down would be able to seek employment elsewhere and, in addition, could be eligible for Federal programs such as food stamps, Aid to Families with Dependent Children, and other similar benefits not available to the H–1B nonimmigrants. (*See, e.g.,* 7 CFR 273.4; 45 CFR 233.50) Where an employer does not have sufficient work for the H–1B worker to make the payment of his/her required wages feasible or advantageous for the employer, such employer may, at any time, terminate the employment of the H–1B worker, notify the INS, pay for the worker's return to his/her country of origin as required by Section 214(c)(5) of the INA and INS regulations at 8 CFR 214.2(h)(4)(iii)(E) (1995), and no longer be subject to the H–1B program's required wage.

In all particulars, the ACWIA provision is a statutory enactment of the Department's current regulation, the enforcement of which (along with some other provisions) was enjoined by a district court on Administrative Procedure Act procedural grounds (*National Association of Manufacturers* v *Reich*, No. 95–0715, D.D.C. July 22, 1996). The Department has previously published this regulatory provision for notice and comment (60 FR 55339, Oct. 31, 1995), and is now republishing it for further comments. The Department encourages commenters to review the previous Final Rule and Notice of Proposed Rulemaking (60 FR 4028 and 60 FR 55339) in making their submissions. (*See* item O, below.)

The Department proposes to modify the existing regulation, to implement the ACWIA provision and to require that the employer pay the H–1B worker's wages when the worker is in nonproductive status due to employment-related reasons such as training or lack of assigned work. The regulation does not require payment of such wages where the nonproductive status is due to reasons unrelated to employment (such as the worker's voluntary request and convenience or non-work-related circumstances rendering him/her unable to work), unless such payment is required by INS as a condition of the H–1B workers' continued maintenance of lawful status in the United States, or is required by some other statute, such as the Family and Medical Leave Act. Thus, the required wage need not be paid to the worker who—on his/her own initiative—requests ''time off'' to conduct research on matters unconnected to his/her employment, or requests a delay in his/her first day of work in order to have an opportunity to tour the U.S. before undertaking duties of employment. However, the employer would not be relieved of the wage obligation to H–1B worker(s) for any required leave of absence, even if such leave of absence includes U.S. workers.

I. What Special Rule Does the ACWIA Provide for Academic Salaries?

The ACWIA provision on ''benching'' has a special rule permitting ''a school or other education institution'' to apply an established salary practice which might result in an H–1B worker being in an ostensibly ''unpaid'' status for some part of a calendar year. This provision specifies that the institution is permitted to disburse an annual salary over fewer than 12 months if two conditions are met:

- the H–1B worker agrees to the compressed salary payments prior to commencing employment, and
- the salary practice does not otherwise cause any violation of the H–1B worker's authorization to remain in the U.S.

The Department understands this provision to be directed to the common practice by which colleges, universities, and other educational institutions disburse faculty salaries over a nine-or ten-month period, with no salary payments during the summer or some other period during which the faculty member may be away from the institution, which INS recognizes.

The Department is proposing regulatory language to implement this ACWIA provision, and seeks comments on the proposal and any related matters.

J. What Actions or Circumstances Would be Prohibited as a ''Penalty'' on an H–1B Nonimmigrant Leaving an Employer's Employment?

The ACWIA prohibits an employer from ''requir[ing] an H–1B nonimmigrant to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer.'' The Department is authorized to ''determine whether a required payment is a penalty (and not liquidated damages) pursuant to relevant State law.'' This provision embodies well-established principles in employment contract law. Under those principles, Congress sought to assure that the application of State law was determinative (rather than the Secretary's independent interpretation of what constitutes ''liquidated damages'' under State law) so that non-punitive payments, serving to compensate an employer for matters such as the loss of proprietary information, would be permissible but that punitive payments would not.

The Department proposes a regulation that would apprise employers and H–1B workers that an employer's ability to enforce ''agreed damage'' provisions in a contract between the parties is limited. The proposed rule would require employers to obtain a State court judgment as a condition for seeking to enforce such provisions (*i.e.*, an employer may not obtain such recovery from the worker without a State court judgment). In the Secretary's view, this best effects the statutory prohibition against the enforcement of penalties by leaving to State courts the resolution of what may be difficult legal questions. In particular cases, for example, it will be necessary to determine the applicable State law to apply, requiring consideration of, among other factors: where the agreement was entered into, and, if entered into in another country, whether that Nation's laws get factored into the analysis; whether the parties have agreed that the contract will be administered in accordance with the laws of a particular State (and, if so, whether it is appropriate to defer to their choice); where the employee was located at the time of the termination; and where the employer seeks to enforce the provision. The regulation would not set out particular guidelines, since it would not be feasible or appropriate to digest the law of all the States in this rule.

In proposing this approach, the Department considered the alternative of establishing a procedure by which the Department would determine whether a particular employment agreement provides for acceptable ''liquidated damages.'' In the Department's view, the State courts are much better versed than a Federal administrative forum to answer the various legal questions posed by any agreement between an employer and an H–1B worker, and to conclusively determine whether a particular provision runs afoul of State law. The Department has no particular expertise in interpreting State law, nor in discerning from the existing State decisional and statutory law (which may not be easily analogized to the H–1B context) the principles that a State court would apply in the particular context of a dispute between an employer and an H–1B worker.

The Department also intends to make it clear that since the ACWIA does not permit employers to accept reimbursement from an H–1B worker of the additional $500 fee imposed on H–1B employers (see section K, below), in no event may the employer collect the fee under the guise of liquidated damages. The Department is also concerned about attempts by employers to collect liquidated damages where their violations of the INA, this program, or other employment law may have caused an H–1B worker to cease employment. The Department anticipates that State courts will often recognize that under these circumstances the claimed payment would constitute a penalty rather than liquidated damages, or that the payment otherwise would be unenforceable. The Department seeks comments as to whether guidelines on this issue would be appropriate and authorized by the statute.

The Department seeks comments on its regulatory proposal and on any related matters.

K. What Standards Apply to Determine if an Employer Received a Prohibited Kickback of the Additional $500 Filing Petition fee From an H–1B Worker?

The ACWIA prohibits an employer from ''requir[ing] an alien who is the subject of a [visa] petition . . . for which a fee is imposed under section 214(c)(9), to reimburse, or otherwise compensate, the employer for part or all of the cost of such fee. It is a violation for such an employer otherwise to accept such reimbursement or compensation from such an alien.'' The referenced filing fee is the additional $500 filing fee enacted by the ACWIA, which is applicable to H–1B petitions filed before October 1, 2001. The effect of this ACWIA provision is to make the employer solely and entirely responsible for the additional $500 filing fee; the H–1B worker is not in any manner to pay or absorb the cost of any of the fee. The Department takes the position that the employee is not to be forced, encouraged, or permitted to rebate any part of the fee to the employer—directly or indirectly, *e.g.*, through an intermediary such as an attorney, relative or co-worker.

The Department proposes a regulatory provision making this requirement clear, and seeks comments on this proposal and any related matters.

L. What Penalties and Remedies Apply if the Employer Imposes an Impermissible Penalty or Receives an Impermissible Rebate?

The ACWIA enforcement provision on penalties and kickbacks is self-contained in that it provides its own sanctions authority. The Department may impose a civil monetary penalty of $1,000 for each violation (willful or non-willful) and, in addition, may order the employer to reimburse the worker (or the Treasury, if the worker cannot be located) for any such payment. The provision does not authorize debarment for these penalty and kickback violations. The Department seeks comments on its regulatory language implementing this ACWIA provision, and on any related matters.

M. How did the ACWIA Change DOL's Enforcement of the H–1B Provisions?

The ACWIA adds two new specific avenues for conducting investigations, explicitly protects employees who seek to exercise their rights against employer retaliation, and enhances the monetary and debarment sanctions against employers who willfully violate the requirements of this part. The Department proposes to modify Subpart I of the current regulations to reflect these new provisions, integrating them into the existing regulatory scheme. The Department requests comments on each of the enforcement-related issues identified below and on any other related matters, including but not limited to the Department's receipt of allegations of employer violations, the investigation and adjudication or other resolution of such allegations, and the extent of the Department's authority to remedy violations.

1. What Changes has the ACWIA Made in the DOL's Enforcement Based on Complaints From ''Aggrieved Parties''?

The ACWIA adds to the Department's authority to investigate ''aggrieved party'' complaints, by (1) specifically authorizing the Department to conduct ''random'' investigations of employers which have been found to have willfully violated their obligations under the H–1B program, and (2) establishing a specific protocol for investigations of possible violations based on information from sources other than aggrieved parties.

2. What Procedure Does the ACWIA Provide for Random Investigations?

The ACWIA authorizes special Departmental scrutiny of any employer which has been found by the Secretary, after ACWIA's enactment on October 21, 1998, to have committed a willful failure to meet an LCA condition or a willful misrepresentation. The same special scrutiny is authorized where an employer is found by the Attorney General to have willfully failed to meet its obligation to offer a job to an ''equally or better qualified'' U.S. worker. ''Random'' investigations of such an employer may be conducted for a period of up to five years, beginning on the date of the finding of the willful violation.

The Department proposes a regulatory provision which will interpret the ''finding'' of willful violation—which triggers such special scrutiny—to be the agency's final action concerning the violation (*e.g.*, the Secretary's decision after opportunity for a hearing; settlement agreement between the Department and the employer; or the Attorney General's decision after an arbitration proceeding). This interpretation comports with the Department's current regulation concerning the debarment notice which is sent to the Attorney General after the completion of the DOL hearing and review process. 20 CFR 655.855(a); 59 FR 65657 (Preamble to Final Rule). The Department seeks comments as to whether it should instead use an earlier date, such as the Wage and Hour Administrator's investigation finding or the ALJ's finding.

3. What Procedure Does the ACWIA Provide for Investigations Arising From Sources Other Than Aggrieved Parties?

The ACWIA provides for the investigation of possible violations which come to the Secretary's attention based on information from sources other than aggrieved parties. Under this ACWIA provision (which will sunset on September 30, 2001), the Department will establish procedures for the receipt and recording of such information, notification where appropriate to employers regarding possible violations, and certification by the Secretary for an investigation where there is reasonable cause to infer the possibility of such violations and other statutory conditions are satisfied. The focus of such investigations will be on whether an employer has willfully failed to meet its statutory obligations, has engaged in a pattern or practice of such failure, or where its failure is ''substantial'' and affects multiple employees.

The ACWIA specifies that the allegations must be put in writing, either by the ''source'' or by a DOL employee on behalf of the source, ''[o]n a form developed and provided by the Secretary . . .''. The Department is developing this form, which like other DOL forms, will go through the normal Office of Management and Budget clearance process. When cleared, the form will be publicly available from Departmental offices and other sources.

The Department proposes a revision of Subpart I of the regulations to recapitulate the new investigative protocol (along with the ''random'' investigation process), so as to provide an integrated procedure for enforcement activities, which would include receiving and processing allegations of and information pertaining to violations of H–1B requirements, initiating and conducting investigations, providing hearings and notifications, and imposing appropriate penalties and remedies.

4. What Protections are Provided to ''Whistleblowers'' by the ACWIA?

The ACWIA provides explicit protection for employees who exercise their H–1B rights by complaining about a violation of the Act or cooperating with an investigation. An employer may not ''intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against [such] employee.'' For purposes of this protection, ''employee'' is broadly defined to include former employees and applicants for employment. Like most whistleblower statutes, the ACWIA provision protects ''internal'' complaints—to the employer or any other person. The ACWIA provision is, in essence, a statutory enactment of the Department's long-existing whistleblower regulation for the H–1B program.

To facilitate whistleblower protection by providing special assurances to nonimmigrants who might lodge complaints and be subject to retaliation from employers, the ACWIA directs the Department and the Attorney General to devise a process to enable such a person to remain in the U.S. and seek other employment for a period not to exceed the maximum length of time authorized for an employee in the H–1B classification (provided that the person is ''otherwise eligible'' to remain and be employed in this country). Congress intends that this process would be expeditious and easy to use. (See S12752, Oct. 21, 1998; remarks of Sen. Abraham) The Department and the INS are working in close cooperation to develop this authorization procedure.

5. What Changes Does the ACWIA Make in Enforcement Remedies and Penalties?

Before the ACWIA's enactment, the H–1B provisions of the INA provided one level of civil money penalty (CMP) (''up to $1,000 per violation'') and one level of debarment from the sponsorship of aliens for employment (''at least one year''). The ACWIA establishes a three-tier scheme for sanctions and remedies, depending upon the nature and severity of the violations. In each of the three tiers, as in the previous statutory provision, the Department is authorized to impose ''such . . . administrative remedies as the Secretary determines to be appropriate.'' The three tiers are:

- $1,000-per-violation maximum CMP, plus a one-year minimum debarment, for a failure to meet obligations pertaining to strike/lockout or non-displacement of U.S. workers; a substantial failure pertaining to notification, LCA specificity, or recruitment of U.S. workers; or a

misrepresentation of material fact on the LCA.

- $5,000-per-violation maximum CMP, plus a two-year minimum debarment, for a willful violation of any attestation element, a willful misrepresentation of a material fact on the LCA; or retaliation against a whistleblower.
- $35,000-per-violation maximum CMP, plus a three-year minimum debarment, for a willful violation of an attestation element or a willful misrepresentation of a material fact on the LCA which involves the displacement of a U.S. worker.

The ''appropriate administrative remedies'' authorized in all of these ACWIA provisions would, in the Department's view, include the imposition of curative actions such as providing notice to workers and affording ''make-whole'' relief for displaced workers, whistleblowers, or H–1B workers who failed to receive proper wages, benefits or eligibility for benefits.

The above-described penalty provisions do not apply to violations of the ACWIA prohibitions on penalizing an H–1B worker for early cessation of employment or kickback by the H–1B worker of the additional $500 filing fee. As discussed above (see item l), these violations are subject to separate penalties: $1,000 CMP for each violation, and restitution of any penalty or kickback to the H–1B worker (or to the Treasury, if the worker cannot be located).

N. What Modification to Part 656 Does the ACWIA Provide for the Determination of the Prevailing Wage for Employees of ''Institutions of Higher Education,'' ''Related or Affiliated Nonprofit Entities,'' ''Nonprofit Research Organizations,'' or ''Governmental Research Organizations''?

The ACWIA requires that the computation of the prevailing wage for employees of institutions of higher education, nonprofit entities related to or affiliated with such institutions, nonprofit research organizations and Governmental research organizations should only take into account the wages paid by such institutions and organizations in the area of employment. This ACWIA directive affects both the H–1B program and the Permanent Labor Certification program, since both programs use the prevailing wage computation procedures set out in the Permanent program regulation at 20 CFR 656.40.

On March 20, 1998, the Department published a Final Rule amending its Permanent Labor Certification regulation to change the effects of the *en banc* decision of the Board of Alien Labor Certification Appeals in *Hathaway Children's Services* (9–INA–386, February 4, 1994), which required prevailing wages to be calculated by using wage data obtained by surveying across industries in the occupation in the area of intended employment. The Final Rule, in effect, allows prevailing wage determinations made for researchers employed by colleges and universities, Federally Funded Research and Development Centers (FFRDC) operated by colleges and universities, and certain Federal research agencies to be made by using wage data collected only from those entities. The Department stated in the Preamble to this Final Rule that the amendment to the regulation also changed the way prevailing wages are determined for those entities filing H–1B labor condition applications on behalf of researchers, since the regulations governing the prevailing wage determinations for the Permanent program are followed by State Employment Security Agencies (SESAs) in determining prevailing wages for the H–1B program as well (*see* 54 FR 13756).

The ACWIA provision goes considerably beyond the regulatory amendments made by the Department, in that the ACWIA provisions extend to all nonprofit research organizations and Governmental research organizations. In addition, the ACWIA provisions extend not only to researchers, but to all occupations in which institutions of higher education, nonprofit entities related to or affiliated with such institutions, and nonprofit research organizations or Governmental research organizations may want to employ H–1B workers or aliens immigrating for the purpose of employment.

The Department is consulting with the INS on the definitional issues, since that agency is addressing similar issues with regard to the implementation of the additional $500.00 fee which the ACWIA required for petitions on behalf of H–1B nonimmigrants. The employers excluded from that fee are the same as the employers specified in the ACWIA provision concerning prevailing wage determinations. The Department worked with the INS in developing the following definitions contained in its Interim Final Rule published on November 30, 1998 (63 FR 65657)—

An institution of higher education, as defined in section 801(a) of the Higher Education Act of 1965;

An affiliated or related nonprofit entity. A nonprofit entity (including but not limited to hospitals and medical or research institutions) that is connected or associated with an institution of higher education, through shared ownership or control by the same board or federation, operated by an institution of higher education, or attached to an institution of higher education as a member, branch, cooperative, or subsidiary;

A nonprofit research organization or Governmental research organization. A research organization that is either a nonprofit organization or entity that is primarily engaged in basic research and/or applied research, or a U.S. Government entity whose primary mission is the performance or promotion of basic and/or applied research. Basic research is research to gain more comprehensive knowledge or understanding of the subject under study, without specific applications in mind. Basic research is also research that advances scientific knowledge, but does not have specific immediate commercial objectives although it may be in fields of present or potential commercial interest. Applied research is research to gain knowledge or understanding to determine the means by which a specific, recognized need may be met. Applied research includes investigations oriented to discovering new scientific knowledge that has specific commercial objectives with respect to products, processes, or services.

The INS Interim Final Rule also provides, in relevant part, that a nonprofit organization or entity is one that is qualified as a tax exempt organization under section 501(c)(3), (c)(4) or (c)(6) of the Internal Revenue Code of 1986 and has received approval as a tax exempt organization from the Internal Revenue Service, as it relates to research or educational purposes.

The Department seeks comments on the proper definitions of the entities to which the ACWIA prevailing wage provisions apply. The Department will share these comments with INS in the development of definitions to apply to both the INS and Departmental regulations.

In order to determine prevailing wages as required by the ACWIA, it will be necessary for the Department to determine the appropriate universe(s) to survey, and to determine the availability of relevant, reliable data. The Act treats the four types of organizations in two groups: educational institutions and related research organizations; other nonprofit research organizations and Governmental research organizations. However, the Act does not seem to require that prevailing wages must be

determined separately for those two groups, as distinguished from a universe consisting of all four groups, or surveys of the four types of organizations separately, or some other combination.

Furthermore, the Department has reason to believe that it may not be feasible to identify the different kinds of entities that might comprise educational institutions' related or affiliated nonprofit entities, or nonprofit research organizations. If those entitles cannot be identified, it may not be possible to properly define the universe that should be surveyed to determine the appropriate prevailing wages. One possible alternative the Department is exploring is the use of the prevailing wage data it currently collects in surveying institutions of higher education to determine prevailing wages for one universe consisting of institutions of higher education, affiliated or nonprofit research institutions, and nonprofit research organizations. Data currently being collected by the Office of Personnel Management may be able to be used to determine prevailing wages for Federal Governmental research organizations.

The Department seeks comments on the appropriate universes to use in determining prevailing wages for the entities (employers) mentioned in the ACWIA, methods to develop appropriate universe, and the feasibility and appropriateness of the Department's using data collected from institutions of higher education and Federal Governmental research organizations to determine prevailing wages.

O. What H–1B Regulatory Matters, in Addition to the ACWIA Provisions, are Addressed in This Notice of Proposed Rulemaking?

The Department is re-publishing for notice and comment some of the provisions of the Final Rule promulgated in December 1994 which were proposed for further comment on October 31, 1995, during the pendency of the *NAM* litigation. That litigation resulted in an injunction against the Department's enforcement of some of provisions on Administrative Procedure Act (APA) procedural grounds (*National Association of Manufacturers* v. *Reich*, No. 95–0715, D.D.C., July 22, 1996; *see* item H above).

As indicated in the discussion of the ACWIA provisions above, some portions of these regulations are affected by the enactment of the ACWIA (*e.g.*, ''benching'' or nonproductive time; posting of notice at worksites). For those ACWIA-affected provisions, the Department proposes modifications in the regulations and seeks comments on the new regulatory language. Other previously published provisions—not affected by ACWIA—are being re-proposed with some modifications based on a review of the comments received, as discussed below.

All comments received in response to that earlier Notice of Proposed Rulemaking will be fully considered along with comments received in response to this Proposed Rule. Commenters are urged to review the Notice of Proposed Rulemaking published on October 31, 1995 (60 FR 55339). The re-published provisions concern the following issues.

1. What Are the Opportunities and Guidelines for Short-term Placement of H–1B Workers at Worksite(s) Outside the Location(s) Listed on the LCA?

The most significant regulatory provision affected by the *NAM* decision is the ''short-term placement'' rule (20 CFR 655.735), which the Department was enjoined from enforcing on APA procedural grounds. This provision was published in the October 31, 1995, Proposed Rule. The Department now provides another opportunity for comments, on a slightly-modified version of the provision—allowing the employer to track its ''short-term'' placements at a location via a worker-by-worker count of days of employment in the area (rather than a worksite tally of cumulative workdays of all H–1B workers).

The short-term placement provision was promulgated in the Final Rule (published December 20, 1994; 59 FR 65646), based on comments and suggestions submitted in response to the October 6, 1993, Proposed Rule. This provision—permitting short-term placement of H–1B workers at worksites outside the area(s) of employment listed on the LCA—was intended to allow employers greater flexibility in deploying their H–1B workers in response to business needs and opportunities in new areas. While the Department recognized that employers could, in any instance, choose to file a new LCA for the new area of employment, the Department provided a mechanism by which an employer desiring to move quickly or contemplating a temporary operation in a new location could be accommodated under the program without the delay or obligations involved in filing a new LCA. Simply put, the regulation authorizes the employer to use H–1B worker(s) in a non-LCA location (*i.e.*, location not covered by an existing LCA) for a total of 90 workdays within a three-year period, without having to file a new LCA for that new location. Thus, the employer could use H–1B workers to respond immediately to an opportunity or a problem in a non-LCA location, without waiting to prepare and file an LCA for that location. If the situation were resolved within the regulation's ''short-term'' window (*i.e.*, if the H–1B worker(s) were no longer needed at the location), then a new LCA would never be required. But if the H–1B worker(s) would be needed in the new location for a longer period, then the employer would have ample time within which to prepare and file a new LCA while already using the H–1B worker(s) at the location. The regulation specified that the ''short-term'' 90-day period would be calculated by totaling all days of work by all H–1B workers in the area of employment (thus covering all worksites within that area), beginning with the first workday by any H–1B worker at any worksite in that area. The 90-day period is applied separately for each new area of employment (*e.g.*, 90 cumulative workdays for Los Angeles, 90 cumulative workdays for San Francisco).

The Department has carefully reviewed the comments received on the October 31, 1995, Proposed Rule and, in response to those comments, proposes to modify the regulation to count workdays on a per-worker basis. Thus, the limit of 90 cumulative workdays (*i.e.*, the end of the ''short-term placement'' period) would be reached when any H–1B worker works for 90 days at any worksite or combination of worksites in the new area of employment. As soon as one H–1B worker has worked more than 90 workdays within that area of employment, no more work could be performed by any H–1B worker at any worksite in that area unless and until the employer files and ETA has certified an LCA for the area. Therefore, the regulation, although based on a per-worker count of workdays, still applies to the employer's entire H–1B workforce and to all worksites in the new area of employment. For example, where an H–1B worker works 10 days at Worksite X in Dallas and 80 days at Worksite Y also in Dallas, the employer has exhausted its 90-day ''short-term placement'' period and is, therefore, required to file and have certified a new LCA for Dallas before any H–1B worker may work at any worksite in Dallas.

Under the proposed rule, as an alternative to filing an LCA for a new area of employment, an employer could place H–1B worker(s) at worksite(s) in the new area—without filing a new LCA (and thus without satisfying the notice and prevailing wage requirements for

such new area)—provided that the employer complies with all three of the following requirements:

- No H–1B worker(s) can work at any worksite(s) in the new (non-LCA-covered) area of employment beyond the cut off point of 90 cumulative workdays (unless the employer filed and ETA has certified an LCA for such new area);
- Each H–1B worker working in the new area is compensated at the required wage rate applicable under the employer's already-certified LCA for that worker's original or permanent work location plus travel-related expenses in the new area (with the Federal government per diem travel expense standards serving as the floor or minimum for such expenses); and
- No H–1B worker is placed at a worksite where there is a strike or lockout in the same occupational classification.

Of course, an employer could at any time avoid the short-term placement option simply by filing an LCA covering the new area of employment and complying with all the LCA requirements, including determination of the prevailing wage rate for that area and providing notice at worksites in that area. Once an LCA is filed and certified for the new area of employment, the LCA would define the employer's obligations and the short-term placement option would no longer apply in any manner to H–1B workers or worksites in that area. Thus, the employer would be required to pay at least the prevailing wage for that area of employment to all H–1B workers placed at worksites there. Any H–1B worker on temporary business in the new area—away from his/her permanent worksite located in some other area of employment—could continue to be paid at the required wage rate for his/her permanent location. While the employer would pay that worker's travel costs (including food and lodging) while away from his/her permanent work location, the Federal government per diem travel expense standards would not be applicable as a ''floor'' (as they would be for H–1B workers working in the area under the short-term placement option).

The short-term placement option would not apply when H–1B workers are sent to any new worksite(s) within an area covered by an already-certified LCA filed by the employer. Such new worksite(s) would be fully subject to the requirements of that existing LCA, including payment of at least the prevailing wage, providing notice at the new worksite, and providing a copy of the LCA to H–1B worker(s) placed at the worksite (unless he/she had already received a copy of the LCA).

a. When is the Short-term Placement Option Available?

This option would be available only when an employer wants to send its H–1B worker(s) (already in the U.S. under an LCA filed by the employer) to a new worksite which is in an area of employment for which the employer does not have an LCA in effect. The option would enable the employer to meet its business needs, by sending H–1B worker(s) to the new worksite(s) without waiting to complete the LCA and revised petition process. After the 90-workday limit is reached by any one H–1B worker, the short-term placement option would no longer be available for any workers; the employer would be required to have an LCA in effect for the new area and to be in full compliance with all the LCA requirements.

The short-term placement option would not apply in any of the following circumstances:

- The H–1B worker being sent to the new areas is initially coming into the U.S. from outside the country (*i.e.*, such a worker must be placed at a location covered by the LCA on which the H–1B petition is based);
- The H–1B worker is being relocated to a new worksite within the same area of employment for which the employer already has a valid LCA (*i.e.*, new worksite is covered by the same LCA as the previous worksite); or,
- The H–1B worker is being relocated from one area of employment to another, but the employer has valid LCAs covering both areas (*i.e.*, new worksite is covered by a different LCA than the LCA for the previous worksite).

The short-term placement option would be irrelevant in circumstances where the employer is relocating H–1B workers (who are already in the U.S.) among worksites in areas covered by valid LCAs. In these circumstances, the employer would be required to comply with the LCA applicable to the new worksite (whether that is the same LCA applicable to the area of the old worksite, or a different LCA applicable to the area of the new worksite). Employers generally would be free to relocate H–1B workers among worksites in areas of employment for which they have valid LCAs, provided that the employer complies with all LCA obligations for the area—the relocation of an H–1B worker would be prohibited if there were a strike/lockout involving the H–1B worker's occupation at the new worksite; a wage adjustment for the relocated worker might be required; new notice at the worksite would not be required (assuming notice was already provided at that worksite, either when the LCA was filed or when some other H–1B worker was sent there).

The short-term placement option also would be irrelevant in circumstances where the employer has an LCA in effect for an area of employment and wants to relocate or temporarily place H–1B worker(s) who would cause the LCA for that area to be ''overcrowded'' or ''overfilled'' with H–1B workers (*e.g.*, raising the number of H–1B workers in the area to 11 instead of the 10 stated on the certified LCA). The short-term placement option does not authorize an ''extra'' workforce of H–1B workers for temporary assignments in an area of employment covered by an LCA. The number of H–1B workers authorized for that employer in that area is determined by the employer's LCA (or combination of LCAs, if the employer has more than one LCA in effect for the area). Employers have inquired whether an H–1B worker can be relocated, even temporarily, to a worksite in an area of employment for which the employer has a valid LCA, if the relocation of that worker would raise the number of H–1B workers in that area to more than the number stated on the LCA. The short-term placement option cannot be invoked by the employer in such circumstances, because the employer has an LCA in effect for the area of employment and that LCA—applicable to all worksite in the area—is controlling. As a matter of enforcement discretion, the Department will look carefully at all the facts and circumstances surrounding situations in which H–1B workers are relocated among LCA-covered locations in a manner that results in more H–1B workers being employed in an area than are stated on the certified LCA(s) for that area. Absent other violations, in those circumstances that indicate good faith efforts by the employer to attempt to comply, the Department would not cite violations relating to the number of H–1B workers employed in an area, provided that the number employed does not significantly exceed the number shown on the LCA. In other circumstances, such as where there are other violations and/or the number of H–1B workers employed in an area significantly exceeds the number stated on the LCA(s), the employer may be cited for misrepresentation of a material fact or for a ''substantial failure'' to accurately state the information specified in the statute. In the situation identified above—an eleventh H–1B worker relocated to an area for which the LCA specifies ten H–1B workers—

the Department would not cite a violation, so long as there were no other violations and there were indications of the employer's good faith (such as taking timely steps to file an additional LCA and a revised petition).

b. What Are the Standards for Payment of the H–1B Worker's Travel Expenses Under the Short-Term Placement Option?

A component of the proposed short-term placement rule is a requirement that employers who wish to avail themselves of this option must pay travel-related expenses at a level at least equal to the rate prescribed for Federal Government employees on travel or temporary assignment, as set out in the General Services Administration (GSA) regulations 41 CFR Part 301–7 and Chapter 301, Appendix A. The Department believes that some uniform guidelines or benchmarks are necessary so that employers do not require H–1B workers to absorb some or all travel expenses themselves, or reimburse them at unreasonably low rates, while the workers are in travel status under the short-term placement option. Further, the Department is aware of no universally available source of information on per diem and travel expenses, other than the GSA regulations which are based on surveys of two-star hotels and comparable restaurants. Therefore, the Department proposes to continue to use the GSA regulations as the benchmark.

The Department believes that some clarification of the requirements is appropriate. The proposed rule clarifies that the H–1B worker's travel expenses (lodging, transportation, meals and incidentals) are to be paid for all days in travel status (wages would not be required for non-workdays). The proposed rule also clarifies the application of the GSA standards to lodging, transportation, meals and incidental expenses. For *lodging*, the regulation would be modified to require the employer to reimburse no more than the worker's *actual cost of lodging up to the GSA specified level* for the location in question, plus applicable taxes. Where the H–1B worker incurs no lodging cost, no payment to the worker for lodging would be required. The Department proposes that the employer may house its workers on travel in company-owned or company-leased accommodations and make no ''lodging'' payments to the workers, provided that such accommodations are reasonable and would be customarily used by its U.S. workers in a similar circumstance. The Department would consider the furnishing of or requirement to use overcrowded or otherwise unreasonable accommodations, as has sometimes been found to be the case, to be an unacceptable method of meeting the employer's obligation to cover the worker's lodging costs while on travel. If the employer provides a lodging allowance to the worker, such allowance would be required to cover the worker's actual expenses but need not be more than the GSA rate for the location in question, plus applicable taxes. For *transportation*, the employer would be required to pay the *actual cost of transportation expenses*, except that where the worker uses a privately-owned vehicle, the employer must cover the cost to operate the vehicle at the per-mile rate set out in 41 CFR 301–4, plus out-of-pocket expenses such as tolls and parking fees. For *meals and incidental expenses*, the employer would be required to pay the H–1B worker at no less than the GSA *per diem* rate for the location. Back wages would be assessed based on the GSA rates where the employer fails to document actual costs or where the employer's payments do not satisfy the GSA standards.

2. What Are an Employer's Wage Obligations for an H–1B Worker's ''Nonproductive Time''?

As described above (*see* item H), the Department is publishing for further notice and comment the provision of the December 20, 1994 Final Rule concerning an employer's obligation to pay the H–1B worker's required wages for certain ''nonproductive'' time, which was enjoined by the district court in *NAM* for procedural reasons. In addition, the Department is proposing a modification of this regulation to implement the ACWIA provision which adds some flexibility for the employer with regard to an H–1B worker ''who has not yet entered into employment.''

3. What Are the Guidelines for Determining and Documenting the Employer's ''Actual Wage''?

The Department is publishing for further notice and comment Appendix A to Subpart H—Guidance for Determination of the ''Actual Wage,'' certain provisions of which were enjoined by the court in the *NAM* litigation for procedural reasons. This provision was also published in the October 31, 1995, Proposed Rule. As the Preamble to that proposal stated, the contents of Appendix A—which consists of examples and guidance on the Department's enforcement policy regarding the computation and documentation of the actual wage—had first appeared, in slightly different format, in the Preamble to the January 13, 1992, Interim Final Rule.

Under Appendix A as proposed, the employer would not be required to create or to document an elaborate ''step'' or ''grid'' type pay system, such as that used by Federal agencies for government employees; no rigid or complex system is mandated by the regulations. The employer's actual wage system may take into consideration any objective, business-related factors relating to experience, qualifications, education, specific job responsibilities and functions, specialized knowledge and other legitimate business factors, including documented job performance. Whatever factors are used in the employer's actual wage system are to be applied to H–1B nonimmigrant workers in the same, nondiscriminatory manner that they are applied to U.S. workers in the occupational classification. The employer's public access documentation must include a description of its actual wage system. The description may consist of a summary document which identifies the business-related factors that are considered and which describes the manner in which they are implemented (*e.g.*, stating the wage/salary range for the occupation in the employer's workforce and identifying the pay differentials assigned to factors such as holding an advanced degree or performing supervisory duties). The employer's description of its actual wage system should be sufficient to enable a third party—such as an employee looking at the public disclosure file—to understand how the system would apply to a particular worker and to derive a reasonably accurate understanding of that worker's wage. Wage rates for each H–1B worker must be in the public access file. However, computation of an H–1B worker's particular wage need not appear in the public access file; that information must be available in the worker's personnel file maintained by the employer. For clarity, the Department purposes to modify Appendix A to include job performance among the legitimate business factors which may be taken into consideration in determining the actual wage.

4. What Records Must the Employer Keep, Concerning Employees' Hours Worked?

The Department seeks further comments on section § 655.731(b)(1) of the regulation, which requires the employer to retain records for ''all employees in the specific employment in question'' (*i.e.*, same occupation as the H–1B worker). This provision, which has been enjoined by the *NAM*

court for procedural reasons, revised former § 655.730(e)(2)(i), which required the employer to maintain documentation for ''all other individuals with experience and qualifications similar to the H–1B nonimmigrant for the specific employment in question.'' For virtually all employers, this change in the regulation had no impact on recordkeeping because most records required under the H–1B program would be the same as those already required under the Fair Labor Standards Act (''FLSA''). However, for employers with salaried non-H–1B workers who satisfy the FLSA exemption for ''bona fide executive, administrative, or professional'' employees (29 CFR Part 541), the change resulted in a requirement not already imposed under the FLSA: to keep records of hours worked each day and each week for FLSA-exempt non-H–1B workers in the ''specific employment in question'' (regardless of their experience and qualifications) *if* the prevailing or actual wage is expressed as an hourly wage.

On September 26, 1995, the Department issued a Notice of Enforcement Position (60 FR 49505) stating that, until further rulemaking, the Department would enforce § 655.731(b)(1) of the Final Rule as stated, except that, with respect to any additional workers for whom that Rule extended recordkeeping requirements beyond those specified in the Interim Final Rule, the employer would need to keep only those records which are required by the FLSA regulations at 29 CFR Part 516.

In the October 31, 1995, Proposed Rule, the Department proposed to amend § 655.731(b)(1) to make it consistent with FLSA recordkeeping requirements. Under the proposal, employers would be required to retain records of hours worked for non-H–1B workers in the specific employment in question (whether or not the non-H–1B workers have similar experience and qualifications) only if the non-H–1B workers are paid on an hourly basis or if the actual wage is expressed as an hourly rate. Since the first element of the FLSA Part 541 exemption test is that the employees be paid ''on a salary basis'' (*i.e.*, not paid hourly wages (29 CFR 541.118)), the effect of this proposal would be that records of hours worked would be required for U.S. workers only if the worker is either not paid on a salary basis, or if the actual wage is stated as an hourly wage. For H–1B workers, such records must also be kept if the prevailing wage is expressed as an hourly rate.

5. What are the Requirements for Posting of ''Hard Copy'' Notices at Worksite(s) Where H–1B Workers are Placed?

The Department proposes for comment a revision of §§ 655.734(a)(1)(ii)(C) and (D) of the regulation, which it previously republished for notice and comment in the October 31, 1995, Proposed Rule. The Department proposes that this provision be modified to implement the ACWIA provision concerning electronic notification (*see* item F), but it would be unchanged with regard to ''hard copy'' notices. Subparagraph (C) requires employers to post notice at worksites on or within 30 days before the date the LCA is filed. Subparagraph (D) requires that, where the employer places an H–1B nonimmigrant at a worksite which is not contemplated at the time of filing the LCA but is within the area of intended employment listed on the LCA, the employer is to post notice at such worksite on or before the date any H–1B nonimmigrant begins work there. Under both subparagraphs, such notice is to remain posted for ten days. The regulation provides that worksite notice may be accomplished either by posting hard copies of the notice or by providing electronic notice. Where the H–1B worker(s) will be employed at the worksite of another employer, the H–1B employer is required to provide notice to the affected workers at that worksite, and may make arrangements with the other employer to accomplish the notice (*e.g.*, have the other employer ''post'' the electronic notice on its intranet or employee newsletter) .

It should be noted that if a location does not constitute a ''worksite,'' the employer is not required to post notice there. (*See* proposed Appendix B, below, regarding clarification of ''place of employment.'') The requirement to post notice at the ''place of employment'' is statutory. 8 U.S.C. 1182(n)(1)(C). The Department's definition of ''place of employment'' focuses on the ''worksite'' or place where the work is actually performed. This definition achieves the intent of the law's notice requirement to inform affected employees that an LCA has been filed and that nonimmigrants may work at that place of employment. Without such information, potentially affected employees would not be aware of employer obligations under and compliance with the LCA conditions, and would be unlikely to be able to file complaints where the situation would warrant it. As explained in proposed Appendix B, the Department has reasonably interpreted ''place of employment'' as not including locations where the H–1B worker's presence is short-sterm and transitory due to the nature of his/her job (*e.g.*, computer ''troubleshooter''; sales representative; trial witness) or due to the developmental nature of his/her activity (*e.g.*, management seminar; formal training seminar).

6. What Are the Time Periods or ''Windows'' Within Which Employers May File LCAs?

The Department seeks further comment on two current regulatory provisions which restrict the time periods or ''window'' within which LCAs may be filed—no earlier than 180 days (6 months) prior to the starting date of the employment period identified on the LCA, and no later than 90 days (3 months) from the date of any State Employment Security Agency (SESA) prevailing wage determination used in the LCA. Both of these provisions are reproposed without modification.

The October 31, 1995, Proposed Rule republished for notice and comment § 655.730(b), which requires that the employer file the LCA no earlier than 6 months before the beginning date of the specified period of employment. This provision addressed the situation of some employers who were filing LCAs for periods of employment months in the future. The Department believes that, because the prevailing wage and notice obligations are based upon actions taken and conditions which exist at the time the LCA is filed, such premature applications can defeat the intent of these statutory elements. In one case, for example, an employer filed an LCA for a period of employment two years from the time of filing. Such an employer could use a prevailing wage determination from an independent authoritative source based on wage information which is up to four years old. By the time the nonimmigrants actually enter the U.S. two years after the LCA date, the prevailing wage information would be as much as six years old. In addition, this employer would post notice for ten days at the time of filing the LCA, and then import the nonimmigrants two years later. By that time, U.S. workers who might otherwise file complaints regarding violations of the LCA would be unaware of essential information listed on the posted LCA, such as the number of nonimmigrants, rate(s) of pay, job title(s), and the location where documentation is kept.

The October 31, 1995, Proposed Rule also republished for notice and comment current

§ 655.731(a)(2)(iii)(A)(*1*), which requires the employer to file an LCA relying upon a SESA prevailing wage determination within 90 days of the SESA's issuance of the determination. The 90-day validity period of a SESA prevailing wage determination is designed to prevent the employer's use of aged or stale wage determinations, which can adversely affect the wages of U.S. workers. In the Department's view, it is unreasonable to permit employers to use SESA determinations which are more than three months old since those determinations may well be based on wage information that is already years old, and they may be relied upon by the employer for the entire 3-year validity period of the LCA (periodic updates of the prevailing wage not being required under the Final Rule). An employer's use of SESA prevailing wage determinations more than three months old would be inconsistent with the statutory requirement that employers pay at least the wage which is prevailing at the time the LCA is filed.

It should be noted that employers are not required to use SESA determinations in filing LCAs. Employers may, instead, determine the prevailing wage from other sources (*i.e.*, independent authoritative sources or other legitimate sources of wage information). Those sources are not subject to a 90-day validity period, but must satisfy the appropriate regulatory definitions or description.

7. How May an Employer Challenge a SESA-Issued Prevailing Wage Determination?

The Department seeks further comment on §§ 655.731(a)(2)(iii)(A)(*1*), 655.731(d)(2), and 655.840(c) regarding the use of the Employment Service (''ES'') complaint system to challenge any SESA prevailing wage determinations. These provisions were republished for notice and comment in the October 31, 1995, Proposed Rule.

Irrespective of whether the SESA wage determination is obtained by the employer prior to filing the LCA or by the Wage and Hour Division in an enforcement proceeding, these provisions (taken together) require employers to assert any challenge to the SESA prevailing wage determination under the ES complaint system, rather than in an enforcement proceeding before the Office of Administrative Law Judges. In designing the program, the Department had envisioned that the ES complaint process would be used for all challenges of SESA prevailing wage determinations. However, after substantial enforcement litigation experience, the Department found that some employers were instead attempting to contest these wage determinations through the enforcement hearing provided under § 655.835. That hearing process was not intended to handle these prevailing wage challenges, and the proposed regulatory provisions (which are currently in effect) achieve the Department's original intent.

P. What Additional Interpretative Regulations is the Department Proposing?

During the course of the Department's administration and enforcement of the H–1B program, a number of issues have been raised by employers and interest groups regarding the interpretation and application of the existing regulations. In order to provide more complete guidance for these affected parties—and thereby facilitate compliance, administration, and enforcement under the H–1B program—the Department is publishing for comment a proposed Appendix B for Part H of the regulation. The interpretations presented in Appendix B are matters which have been discussed with employers and interest groups in numerous outreach meetings over the last several years. The Department considers it appropriate to include these provisions in the regulations, either as an appendix or in the regulatory text, and therefore is providing a more formal process for interested parties to express their views concerning these interpretations.

The Department seeks comments on the matters addressed in Appendix B (described below).

1. What Constitutes an H–1B Worker's ''Worksite'' or ''Place of Employment'' for Purposes of the Employer's Obligations Under the Program?

The H–1B program's attestation requirements are largely focused on the H–1B worker's ''place of employment'' or ''worksite.'' That location—''place'' or ''site''—determines the appropriate prevailing wage; that location is where the employer must provide notice to workers concerning the employment of H–1B nonimmigrants; and the strike/lockout prohibition is applicable to that location. Thus, it is essential that employers be able to determine whether a particular location constitutes a ''worksite'' (triggering the program's requirements) or is, instead, a non-worksite at which the H–1B worker may perform certain of his/her job duties for a short period of time. Appendix B explains that ''worksite'' ordinarily encompasses any location at which the H–1B worker performs his/her job duties, but does not include a location at which the worker is engaged in employee development activity (*e.g.*, receiving formal training) or at which the worker's presence is due to the nature of his/her duties and is of short duration (*e.g.*, making a sales call on a customer; testifying at a court hearing; conducting research at a library).

2. Under What Circumstances May an H–1B Worker ''Rove'' or ''Float'' From His/Her ''Home Base'' Worksite?

The Department recognizes that some employers—due to the nature of their businesses—need to move their H–1B workers from place to place in order to meet the needs of clients or to respond to new business opportunities. This practice is described as having H–1B workers ''rove'' or ''float'' from their ''home base'' locations. Because the H–1B program's requirements focus on the H–1B worker's ''worksite'' (*see* item O.5), it is important that employers be able to determine the circumstances under which an H–1B worker may legally be dispatched from his/her ''home base'' worksite to other location(s) to perform job duties. In Appendix B, the Department explains that every H–1B worker is, by law, covered by an LCA and that, consequently, there is no means by which an H–1B worker may ''float'' in the U.S. economy without being subject to the wage, working conditions, and other requirements of an LCA. However, as the Appendix further explains, an H–1B worker may legally be dispatched from his/her home base location in any of three circumstances—

- H–1B worker is dispatched to a ''non-worksite'' location (*see* item O.5). The worker would still be covered by his/her home base LCA.
- H–1B worker is dispatched to a worksite that is covered by an LCA (either the LCA for the home base, or a different LCA if the new location is outside the home base LCA's area). The worker would be covered by the LCA applicable to the new worksite.
- H–1B worker is dispatched for a short-term placement under the regulation authorizing up to 90 workdays of such placement in an area not covered by an LCA (*see* item O.1, above). The worker would be covered by his/her home base LCA.

3. What H–1B Related Fees and Costs Are Considered to Be an Employer's Business Expenses?

The Department believes that where the employer is required by law to perform certain functions and no other party can legally perform those functions, all expenses connected with such functions are the employer's

business expenses, which must be borne by the employer without being imposed on the H–1B worker in any manner. As explained in Appendix B, the application of this analysis to the H–1B program leads, necessarily, to the conclusion that all fees and costs connected with the filing of the LCA and the H–1B petition (*e.g.*, prevailing wage survey preparation; attorney fees; INS fees) are to be borne by the employer since—by the express terms of the statute—the employer must file both the LCA and the petition, and the H–1B worker is not permitted to perform either of those functions. As further explained in Appendix B, the Department recognizes that expenses connected to the H–1B worker's own function of filing for and obtaining the visa itself (*e.g.*, translations of academic records) could appropriately be borne by the H–1B worker, since such costs would not necessarily be the employer's business expenses. This interpretation is fully consistent with the ACWIA provision relating to the new $500 petition filing fee (*see* item K).

4. When Is the Service Contract Act Wage Rate Required to Be Applied as the ''Prevailing Wage''?

The regulation provides that, if there is an SCA wage determination for the occupational classification in the area of employment for which an employer is filing an LCA, that SCA wage determination is considered by the Department to constitute the prevailing wage for that occupation in that area. Appendix B explains that, because the SCA rates cover the occupation in the area, these rates are applicable to the LCA, without regard to whether individual H–1B worker(s) eventually employed under the LCA may have qualifications or job descriptions that could satisfy an exemption from the rate if he/she were working on an SCA contract. Further, Appendix B explains that because the SCA wage determination for occupations in the computer industry are capped by statute (SCA, incorporating FLSA) at $27.63, even where the prevailing wage is higher, the Department has instructed the SESA not to issue a prevailing wage from the SCA wage determination where that SCA wage is stated as $27.63.

5. How Are the ''PMSA'' and ''CMSA'' Concepts Applied?

Appendix B explains that in computing prevailing wages for an ''area of intended employment,'' the Department will consider all locations within either a metropolitan statistical area (MSA) or a primary metropolitan statistical area (PMSA) to constitute ''normal commuting distance'' and, thus, subject to the same prevailing wage rates. Further, Appendix B explains that a consolidated metropolitan statistical area (CMSA) will not be used in this manner in determining the prevailing wage rates (*i.e.*, all locations within a CMSA will not necessarily be deemed to be within normal commuting distance). The Department has determined, based on its operational experience, that CMSAs can be too geographically broad to be used in this manner. As explained in Appendix B, the Department has not adopted any rigid measure of distance as a ''normal commuting area'' (*e.g.*, 20, 30, 50 miles) and, therefore, locations that are outside any ''statistical area,'' locations near the boundaries of MSAs and PMSAs, and locations within or near the boundaries of CMSAs may be within normal commuting distance, depending on the factual circumstances.

6. How Does the ''Weighted Average'' Apply in the Determination of the Prevailing Wage?

Appendix B explains that, due to the inadvertent omission of the word ''weighted'' from one provision in the regulation, there has been a suggestion of confusion for an employer which uses an ''independent authoritative source'' to determine the local prevailing wage to be used on an LCA. When read together, the regulations on the computation of the prevailing wage require the use of the ''weighted average'' statistical methodology. In Appendix B, the Department describes this methodology and clearly states how and when it is to be used.

7. What is the Effect of a New LCA on the Employer's Prevailing Wage Obligation Under a Pre-Existing LCA?

Employers who, over a period of time, file several LCAs for the same occupation in the same area of employment—so as to increase their staff of H–1B workers—may well find that these LCAs reflect a changing prevailing wage for that occupation and area. There is a possibility for confusion in such situations, concerning the prevailing wage which is required for the various H–1B workers. As explained in Appendix B, the Department considers the employer's prevailing wage obligation to any individual H–1B worker to be prescribed by the LCA which supports the H–1B petition for that worker. Thus, the employer is required to pay that worker at least the amount of that prevailing wage; a different prevailing wage appearing on a different LCA would not be applicable. The employer is not required to ''adjust'' the prevailing wage amounts for the entire H–1B workforce, based on a new prevailing wage that appears on a new (later) LCA. However, as further explained in Appendix B, the employer would be required to make ''adjustments'' for all H–1B workers in accordance with the employer's actual wage system (*e.g.*, merit increases; cost of living increases), since all H–1B workers are covered by the actual wage system (regardless of any difference among prevailing wage rates under various LCAs).

IV. Summary

The Department welcomes comments on any issues addressed in the proposed regulations—including the proposals caused by the enactment of the ACWIA; the reproposal of provisions published for comment in October, 1995; and the proposed interpretative provisions in Appendix B—as well as on any other issues that commenters believe need to be addressed.

V. Executive Order 12866

This proposed rule is being treated as a ''significant regulatory action'' within the meaning of Executive Order 12866, because of its importance to the public and the Administration's priorities. Therefore, the Office of Management and Budget has reviewed the proposed rule. However, because this rule is not ''economically significant'' as defined in section 3(f)(1) of E.O. 12866, it does not require a full economic impact analysis under section 6(a)(3)(C) of the Order.

The H–1B visa program is a voluntary program that allows employers to temporarily secure and employ nonimmigrants admitted under H–1B visas to fill specialized jobs not filled by U.S. workers. The statute requires that the employer pay an H–1B worker the higher of the actual wage or the prevailing wage, to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers. This rule would implement statutory changes in the H–1B visa program enacted by the ACWIA of 1998. The ACWIA (1) temporarily increases the maximum number of H–1B visas permitted each year; (2) temporarily requires, during the increased H–1B cap period, new non-displacement (layoff) and recruitment attestations by ''H–1B dependent'' employers and employers found to have committed willful violations or misrepresentations; (3) requires employers of H–1B workers to offer the same fringe benefits to H–1B workers as it offers its U.S. workers; (4) requires an employer in certain cases to

pay an H–1B worker even if work is not available and the worker is placed in a non-productive status (but not for non-productive time due to non-work-related factors like a voluntary request to be absent); and (5) provides whistleblower protections to employees (including former employees and applicants) who disclose information about potential violations or cooperate in an investigation or proceeding.

The direct, incremental costs that an employer would incur because of this rule above customary and usual business expenses for recruiting qualified job applicants and retaining qualified employees in specialized jobs are expected to be minimal. Collectively, the changes proposed by this rule will not 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, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Therefore, the Department has concluded that this rule is not ''economically significant.''

VI. Small Business Regulatory Enforcement Fairness Act

The Department has similarly concluded that this proposed rule is not a ''major rule'' requiring approval by the Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). It will not likely result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

VII. Unfunded Mandates Reform Act of 1995; Executive Order 12875

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector, ''* * * (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' For purposes of the Unfunded Mandates Reform Act, this rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local or tribal governments in the aggregate, or by the private sector. Moreover, the requirements of the Unfunded Mandates Reform Act do not apply to this proposed rule because it does not include a ''Federal mandate,'' which is defined to include either a ''Federal intergovernmental mandate'' or a ''Federal private sector mandate.'' 2 U.S.C. 658(6). Except in limited circumstances not applicable here, those terms do *not* include ''a duty arising from participation in a voluntary program.'' 2 U.S.C. 658(5)(A)(i)(II) and (7)(A)(ii). A decision by an employer to obtain an H–1B worker is purely voluntary, and the obligations arise ''from participation in a voluntary Federal program.''

For similar reasons, the proposed rule is not an ''unfunded mandate'' within the meaning of Executive Order 12875. By its terms, section 1 of E.O. 12875 applies to ''any regulation that is not required by statute and that creates a mandate upon a State, local or tribal government.'' The order requires agencies to consult with State, local, and tribal governments when developing regulatory proposals containing significant unfunded mandates. For the reasons noted, the proposed rule does not create any significant unfunded mandate on units of government.

VIII. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis, describing the anticipated impact of the proposed rule on small entities. The following analysis has been prepared to assess the impact of the proposed rule on small entities. Based on this analysis, we have concluded that this rule will not have a significant economic impact on a substantial number of small entities. The impact of the rule derives from specific statutory obligations set forth in the underlying H–1B legislation, which DOL does not have the discretion to alter. The direct, incremental costs are not believed to be significant in any case. Moreover, as discussed below, most of the new compliance obligations addressed in this rulemaking apply to only a small subset of the full universe of employers that participate in the H–1B program, namely, those that meet the new definition of ''H–1B-dependent employer,'' which we estimate to number no more than 200. Even assuming that all of the entities within this subset of 200 employers qualify as ''small,'' the number is not considered substantial.

1. Why Is This Action Being Considered?

On October 21, 1998, President Clinton signed into law the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), which was enacted as Title IV of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (Public Law 105–277). ACWIA amended the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1101 *et seq.*), relating to the H–1B visa program. Under the H–1B visaprogram, employers may temporarily import and employ nonimmigrants admitted into the U.S. under H–1B visas in specialty occupations and as fashion models, instead of employing U.S. workers, under certain conditions. Section 412(d) of ACWIA provides that some of the amendments made by ACWIA do not take effect until the Department promulgates implementing regulations, which are the subject of this proposed rulemaking. Under Section 412(e) of ACWIA, in order to promulgate implementing regulations in a timely manner, the Department of Labor may reduce to 30 days the period for public comment on proposed regulations.

2. What Are the Objectives of, and the Legal Basis for, the Proposed Rule?

The proposed rule is issued pursuant to provisions of the INA, as amended, and the ACWIA, 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*; sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note); and sec. 412(d) and (e), Pub. L. 105–277, 112 Stat. 2681. Its objectives are to enable employers to understand and comply with applicable requirements under the amended H–1B visa program, and to advise employees and applicants of the protections afforded by the amendments to U.S. and H–1B workers.

3. How Many Small Entities Will Be Covered by the Proposed Rule?

At least some parts of this proposed rule would apply to all employers which seek to temporarily employ nonimmigrants admitted into the U.S. under the H–1B visa program in specialty occupations and as fashion models. The obligations differ under the law and the rules for ''H–1B-dependent'' employers from those that are not ''H–1B-dependent.''

The definition of ''small'' business varies considerably, depending on the policy issues and circumstances under review, the industry being studied, and the measures used. The size standards

used by the U.S. Small Business Administration (SBA) to define small business concerns according to their Standard Industrial Classification (SIC) codes are codified at 13 CFR 121.201. SBA's small size standards are generally expressed either in maximum number of employees or annual receipts (in millions of dollars).

If we could construct a profile of each business that used H–1B workers showing both the total number of workers employed and the portion that are H–1B workers, together with total annual receipts and the applicable SIC industry code, we could then apply SBA's size standards and gauge precisely how many of the affected businesses are ''small.'' Unfortunately, the precise data required for this analysis are not available. However, we know that nearly one-half (44.4 percent) of the job openings being certified under the H–1B program are for computer-related occupations, and over one-fourth (25.9 percent) are for therapists (principally physical and occupational).[1] Looking just at these categories would present a view of nearly three-fourths of all the certified job openings under the H–1B program.

For Major Group 73, Business Services, the SBA's small business size standards for SIC codes in which computer-related occupations would likely be employed are all at the $18 million level (annual receipts).[2] Data from the *1992 Census of Service Industries: Establishment and Firm Size* (published February 1995) indicate that 39,511 out of a total 40,242 firms (or 98.18 percent) have annual receipts less than $18 million.

The Business Services category would not include other users of H–1B workers in computer-related occupations, such as computer equipment manufacturers. For computer and other electronic equipment manufacturers, the SBA's small size threshold is 1,000 employees.[3] In 1994 (latest data on size distribution), 1.6 percent of the establishments employed 1,000 or more workers (comprising 42.1 percent of the employment in the industry).[4] There were more than 14,000 establishments in this industry in 1996.

For Major Group 80, Health Services, the SBA's small size threshold for all categories within the group are at the $5 million (annual receipts) level. Data from the *1992 Census of Service Industries: Establishment and Firm Size* (February 1995) indicate that 244,437 out of a total 249,052 firms (or 98.15 percent) have annual receipts less than $5 million.[5]

Based on the above data, the vast majority (over 98 percent) of the businesses in the industries in which H–1B workers are likely to be employed would meet SBA's definition of ''small.'' However, as noted above, the new compliance obligations under ACWIA (and, therefore, under these regulations) differ for employers who meet a new statutory definition of being ''H–1B dependent'' or have been found after the effective date of ACWIA to have committed willful violations or misrepresentations. Section 412(a)(3) of ACWIA defines ''H–1B-dependent employer'' as an employer that has 25 or fewer full-time equivalent employees employed in the U.S. and more than 7 H–1B nonimmigrants, at least 26 but not more than 50 full-time equivalent employees and more than 12 H–1B nonimmigrants, or at least 51 full-time equivalent employees and a workforce of H–1B nonimmigrants comprising at least 15 percent of its full-time equivalent employees. ACWIA requires H–1B-dependent employers and employers found to have willfully violated H–1B requirements to attest that they will not displace (layoff) U.S. workers and replace them with H–1B workers in essentially equivalent jobs, that they will not place H–1B workers with other employers without first inquiring as to whether they intend to displace U.S. workers, and that they have taken good faith steps to recruit in the United States for U.S. workers to fill the jobs for which they are seeking H–1B workers. An employer filing an LCA pertaining only to ''exempt H–1B nonimmigrants'' need not comply with the non-displacement and good faith recruitment attestations, regardless of status as an H–1B-dependent or willful violator. ''Exempt H–1B nonimmigrants'' are defined as those who earn at least $60,000 annually or who have attained a master's degree or its equivalent in a specialty related to the intended employment.

The Department estimates that approximately 50,000 employers a year file LCA's for H–1B nonimmigrants. The Department estimates that not more than ten (10) employers a year will be found to have committed willful violations. There are no data available to determine precisely how many ''H–1B-dependent'' employers will exist under the rule. We tried to estimate the number of ''H–1B-dependent'' employers for purposes of this analysis, as follows. Although the test for H–1B dependency varies with the size of the employer, an employer must employ at least seven (7) H–1B workers to be dependent. Therefore, if we assume that every H–1B-dependent employer had the smallest workforce threshold (25 full-time equivalent employees) and therefore subject to the ''more than seven H–1B'' workers test, we can estimate the maximum potential number of H–1B-dependent employers in computer-related fields and health services (using therapists) by determining how many of those employers submitted LCAs seeking certification of more than seven H–1B nonimmigrants on a single LCA. This approach undercounts the potential number of H–1B-dependent employers because some employers requesting fewer than seven H–1B workers on a single LCA may already employ other H–1B workers or may file more than one LCA. For purposes of this analysis, therefore, we calculated the number of employers for which more than five (5) H–1B nonimmigrants were certified on a single LCA to work in computer-related fields or as therapists in FY 1997, to estimate an upper-bound limit of the maximum potential number of H–1B-dependent employers. This yielded a

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[1] Analysis of number of job openings certified in Fiscal Year (FY) 1997 by occupational classification. A total of 180,739 LCAs were filed with the Department in FY 1997, certifying 398,324 job openings.

[2] Major Group 73 includes the following SIC industries: Computer Programming Services (7371); Prepackaged Software (7372); Computer Integrated Systems Design (7373); Computer Processing and Data Preparation and Processing Services (7374); Information Retrieval Services (7375); Computer Facilities Management Services (7376); Computer Rental and Leasing (7377); Computer Maintenance and Repair (7378); and Computer Related Services, Not Elsewhere Classified (N.E.C.) (7379).

[3] According to BLS, the following five SICs comprise the electronic equipment manufacturing industry: 357, Computer and Office Equipment; 365, Household Audio and Video Equipment; 366, Communications Equipment; 367, Electronic Components and Accessories; and 381, Search and Navigation Equipment. These five SICs share common need for high levels of computer programmers, analysts, engineers and other computer scientists. BLS has published data on establishment size for the industry as a whole, but not its five components. See *Career Guide to Industries,* BLS Bulletin 2503, pp. 53–56, January 1998. The products of this industry include computers and computer storage devices such as disk drives; semiconductors (silicon or computer chips or integrated circuits) which are the core of computers and other advanced electronic products; computer peripheral equipment such as printers and scanners; calculating and accounting machines such as automated teller machines; and other electronic equipment using highly skilled computer and other scientists and professionals.

[4] BLS Bulletin 2503 (January 1998). Source: U.S. Department of Commerce, *County Business Patterns,* 1994.

[5] SIC industries 8021 (Offices and Clinics of Dentists), 8042 (Offices and Clinics of Optometrists), 8072 (Dental Laboratories), and 8092 (Kidney Dialysis Centers) were subtracted from the total number of health service firms in SIC 80 for purposes of this analysis, based on the assumption that such firms would not likely employ physical or occupational therapists.

total of 1,425 employers (8.7 percent of the total in the sample). This approach for setting the maximum upper limit greatly overstates H–1B dependency, however, because many larger firms employing more than 25 full-time employees would automatically be included in the count of H–1B dependents. For example, we know, that many major employers of H–1B workers have workforces larger than 25 full-time equivalent employees. In addition, some employers file LCAs certifying a need for H–1B workers but for various reasons never fill all the positions. Realistically, we estimate that the actual number of H–1B-dependent employers and willful violators under the rule to be no more than from between 100 and 200 employers.

4. What Are the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule, Which Small Entities Will They Affect, and What Type of Professional Skills are Needed to Meet the Requirements?

The reporting and recordkeeping requirements of this rule are described above in the Supplementary Information section entitled ''Paperwork Reduction Act'' and in various places throughout the preamble. They are also briefly summarized here. In sum, the reporting and recordkeeping requirements of the rule are not overly complex, and in most cases simply require that a copy be kept of a record made for other purposes or that a simple arithmetic calculation be performed. There are no requirements for technical, specialized or professional skills to comply with the reporting or recordkeeping provisions of the rule.

As noted, most new recordkeeping and compliance requirements imposed by ACWIA and this rule apply only to employers meeting the new definition of ''H–1B-dependent employer'' or employers found to have committed willful violations or misrepresentations, which we estimate to number between 100 and 200. To determine if it meets the new definition of ''H–1B-dependent employer,'' an employer of H–1B workers must compare the number of its H–1B workers to the number of full-time equivalent employees. H–1B-dependent employers and willful violators must comply with the new ''non-displacement'' and ''good faith recruitment'' requirements of ACWIA. In many cases, it will be readily apparent, at either end of the spectrum, whether an employer is or is not H–1B dependent. When H–1B dependency is not apparent or it is a close question, the employer must make a mathematical determination, and if it determines it is not dependent, document the determination in its public disclosure file. In order to make the determination, employers will need to keep copies of H–1B petitions and, for part-time workers, either hourly payroll records or a document showing the employee's regular schedule.

The ACWIA provisions on non-displacement and recruitment of U.S. workers do not apply if the LCA is used for petitioning only ''exempt H–1B nonimmigrants.'' If INS determines in the course of adjudicating an H–1B petition that an H–1B nonimmigrant is exempt, the employer must keep a copy of the determination in the public access file.

The proposed rule would require an H–1B-dependent employer or willful violator that is seeking to place an H–1B nonimmigrant with another employer to secure and retain either a written assurance from the second employer, a contemporaneous written record of the second employer's verbal statement, or a prohibition in the contract between the two employers, stating that it has not displaced and intends not to displace a U.S. worker.

H–1B-dependent employers and willful violators must maintain documentation that they have not displaced U.S. workers for a period 90 days before and 90 days after the employer petitions for an H–1B worker. The rule proposes that employers maintain typical personnel records that would ordinarily be readily available, including name, last known mailing address, title and description of job, and any documentation kept on the employee's experience and qualifications and principal assignments, for all U.S. workers who left employment during the 180-day window. The employer must also keep all documents concerning the departure of any such U.S. employees and the terms of any offers of similar employment made to them and their responses. No special records need to be created to meet these requirements. EEOC requires under its regulations that any such existing records be maintained by employers.

H–1B-dependent employers and willful violators must make good faith efforts to recruit U.S. workers using procedures that meet industry-wide standards before hiring H–1B workers. These employers will be required to keep documentation of the recruiting methods they used, including the places, dates, and contents of advertisements or postings, and the compensation terms (if not included in contents of advertisements and postings). These employers must also summarize in the public disclosure file the principal recruitment methods used and the time frame within which the recruitment was conducted. The Department has requested comments on how employers should determine industry-wide standards, and how to make this determination available to U.S. workers. We expect that most employers would ordinarily follow industry standards for recruiting qualified job applicants for specialized jobs. Thus, inasmuch as the requirements are based on industry-wide standards, meeting this statutory standard should not impose significant burdens on affected employers in most cases. To ascertain whether employers have given good faith consideration to U.S. worker/applicants, the proposed regulation would also require retention of applications and related documents, rating forms, job offers, etc. Retention of such records is already required by EEOC, so no additional burden will be imposed.

All employers of H–1B workers must offer fringe benefits to H–1B workers on the same basis and terms as offered to similarly-employed U.S. workers. To document that they have done so, employers must keep copies of their fringe benefit plans and summary plan descriptions, including rules on eligibility and benefits, evidence of what benefits are actually provided to workers, and how costs are shared between employers and employees. Because regulations of the Pension and Welfare Benefits Administration and the Internal Revenue Service generally require employers to keep copies of such fringe benefit information, meeting this requirement should not impose any additional burdens on most affected employers, and in the few cases where such information is not currently retained, it is anticipated that the additional burden will be minor.

The Department has also republished and asked for comment on several provisions of the December 20, 1994 Final Rule (59 FR 65646), which were published for notice and comment on October 31, 1995 (60 FR 55339). As explained above, H–1B workers are required to be paid at least the actual wage or the prevailing wage, whichever is higher. To ensure this requirement is met, employers are required to include in the public access file documents explaining their actual wage system, and to maintain payroll records for the specific employment in question for both their H–1B workers and their U.S. workers. This proposal modifies the payroll recordkeeping requirement with respect to U.S. workers, to require that hours worked records be retained only if the employee is not paid on a salary

basis or the actual wage is expressed as an hourly rate. In virtually all cases, these employees would be paid hourly and hourly pay records would therefore be kept.

5. Are There Any Federal Rules That Duplicate, Overlap or Conflict With This Proposed Rule?

Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), enforced by the U.S. Equal Employment Opportunity Commission (EEOC), prohibits national origin discrimination by employers with 15 or more employees (*see* 29 CFR 1606). The Immigration Reform and Control Act of 1986 (*see* 8 U.S.C. 1324b; 8 U.S.C. 1103(a)), enforced by the U.S. Department of Justice, prohibits national origin discrimination by employers with between four (4) and 14 employees (those not covered by Title VII), and citizenship-status discrimination by employers with at least four (4) employees (*see* 28 CFR 44). In addition, under ACWIA, an ''H–1B dependent'' employer must attest that it has taken good faith steps to recruit in the U.S. for the position for which it is seeking the H–1B worker, and that it has offered the job to any U.S. worker/applicant who is equally or better qualified. The Department of Labor is responsible for enforcing the required recruitment, and the Department of Justice is responsible for administering an arbitration process detailed in ACWIA if U.S. worker/applicants complain that they were not offered a job for which they were equally or better qualified, as required.

6. Are There Significant Alternatives Available Such as Differing Compliance or Reporting Requirements or Timetables for Small Entities?

The compliance and reporting requirements of the proposed rule, together with those significant alternatives which have been identified, are discussed in the ''Supplementary Information'' section of the preamble above. Different timetables for implementing the statutory requirements for smaller businesses would not appear to be consistent with the statute. The legislation temporarily increases the maximum allowable number of nonimmigrants that may be admitted into the U.S. to perform specialized jobs not filled by U.S. workers, and temporarily adds corresponding provisions intended to protect the wages and working conditions of U.S. workers in similar jobs during the same period.

7. Can Compliance and Reporting Requirements be Clarified, Consolidated, or Simplified Under the Proposed Rule for Small Entities?

The compliance and reporting requirements of the proposed rule, and each of the alternatives considered together with their expected advantages and disadvantages, are described in the preamble above. The Department has attempted to keep new recordkeeping requirements to the minimum necessary for the Department to ascertain compliance and for the public to be aware of the primary documentation relied on by the employer to satisfy the statutory requirements. (See Section 212(n)(1) of the INA.) In addition, most recordkeeping requirements are already imposed by other statutes, or only require retention of documents which would be kept by a prudent businessman. Comments are invited on ways to clarify or simplify the compliance requirements for small businesses without undermining the Congressional intent of the new statutory provisions.

8. Can Other Standards be Used (Such as Performance, Rather Than Design Standards)?

The underlying legislation allows employers to temporarily import and employ nonimmigrants admitted into the U.S. under H–1B visas to fill specialized jobs not filled by U.S. workers. As a condition of participating in this voluntary program, the employer must pay the H–1B worker at least the prevailing wage or the actual wage (whichever is higher). Certain employers of H–1B workers must also engage in good faith recruitment to try to find qualified U.S. workers to fill their job openings, and may not displace (lay off) a U.S. worker in order to hire an H–1B worker in the same job. Given the objectives of the applicable statutory provisions, the use of performance rather than design standards has been considered and such alternatives, where perceived to be appropriate, are discussed. For example, the Department is considering a presumption of good faith recruitment based on the employer's hiring a significant number of U.S. workers and, thereby, accomplishing a significant reduction in the ratio of H–1B workers to U.S. workers in the employer's workforce. The available alternatives that were considered in developing this proposed rule are discussed in the preamble above and are not repeated here.

9. Can Small Entities be Exempted From Coverage of the Rule, or Any Part of the Rule?

Exemption from coverage under this proposed rule for small entities would not be appropriate under the terms of the controlling H–1B statutory mandates. The ACWIA contains no authority for the Department to grant such an exemption except to the extent that the statute itself grants an exemption (*e.g.*, the definition of ''H–1B-dependent employer'').

IX. Catalog of Federal Domestic Assistance Number.

This program is not listed in the *Catalog of Federal Domestic Assistance.*

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Employment, Forest and forest products, Health professions, Immigration, Labor, Longshore work, Migrant labor, Penalties, Reporting requirements, Students, Wages.

Text of the Proposed Rule

The text of the proposed rule to amend 20 CFR chapter V appears below. (In addition to the proposed regulatory text, other proposed changes to parts 655 and 656 are discussed in the preamble.)

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The authority citation for Part 655 is proposed to be revised to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m) and (n), 1184, 1188, and 1288(c); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); Title IV, Pub. L. 105–277, 112 Stat. 2681; and 8 CFR 214.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*; sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182

note); and Title IV, Pub. L. 105–277, 112 Stat. 2681.

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

Subpart H—Labor Condition Applications and Requirements for Employers Using Non-Immigrants on H–1B Visas in Specialty Occupations and as Fashion Models

2. In § 655.700, paragraph (a)(1) is proposed to be revised to read as follows:

§ 655.700 Purpose, procedure and applicability of subparts H and I.

(a) * * *

(1) Establishes the following annual ceilings (exclusive of spouses and children) on the number of foreign workers who may be issued H–1B visas or otherwise accorded H–1B nonimmigrant status):

(i) 115,000 in fiscal year 1999;

(ii) 115,000 in fiscal year 2000;

(iii) 107,500 in fiscal year 2001; and

(iv) 65,000 in each succeeding fiscal year;

* * * * *

3. In § 655.715, a new definition of ''Employed or employed by the employer'' is proposed to be added, to read as follows:

§ 655.715 Definitions.

* * * * *

Employed or employed by the employer means the employment relationship as determined under the common law, under which ''no shorthand formula or magic phrase * * * can be applied to find the answer, * * * all of the incidents of the relationship must be assessed and weighed with no one factor being decisive'' (*NLRB* v. *United Ins. Co. of America,* 390 U.S. 254, 258 (1968)), in considering the following factors that would indicate the existence of an employment relationship:

(1) The firm or the client has the right to control when, where, and how the worker performs the job;

(2) The work does not require a high level of skill or expertise;

(3) The firm or the client rather than the worker furnishes the tools, materials, and equipment;

(4) The work is performed on the premises of the firm or the client;

(5) There is a continuing relationship between the worker and the firm or the client;

(6) The firm or the client has the right to assign additional projects to the worker;

(7) The firm or the client sets the hours of work and the duration of the job;

(8) The worker is paid by the hour, week, month or an annual salary, rather than for the agreed cost of performing a particular job;

(9) The worker does not hire or pay assistants;

(10) The work performed by the worker is part of the regular business (including governmental, educational, and nonprofit operations) of the firm or the client;

(11) The firm or the client is itself in business;

(12) The worker is not engaged in his or her own distinct occupation or business;

(13) The firm or the client provides the worker with benefits such as insurance, leave, or workers' compensation;

(14) The worker is considered an employee of the firm or the client for tax purposes (*i.e.*, the entity withholds federal, state, and Social Security taxes);

(15) The firm or the client can discharge the worker; and

(16) The worker and the firm or client believe that they are creating an employer-employee relationship.

* * * * *

4. In § 655.730, in paragraph (b), the first sentence is proposed to continue to read as follows:

§ 655.730 Labor condition application.

* * * * *

(b) *Where and when should a labor condition application be submitted?* A labor condition application shall be submitted, by U.S. mail, private carrier, or facsimile transmission, to the ETA regional office shown in § 655.720 of this part in whose geographic area of jurisdiction the H–1B nonimmigrant will be employed no earlier than six months before the beginning date of the period of intended employment shown on the LCA. * * *

* * * * *

5. In § 655.730, paragraph (d)(4)(i)(B) is proposed to be revised to read as follows:

§ 655.730 Labor condition application.

* * * * *

(d) * * *

(4) * * *

(i) * * *

(B) If there is no such bargaining representative, provides electronic notice or posts notice of the filing of the labor condition application in conspicuous locations in the employer's establishment(s) in the area of intended employment, in the manner described in § 655.734(a)(1)(ii) of this subpart, and provides a copy of the labor condition application to the H–1B worker, in the manner described in § 655.734(a)(2) of this subpart; and

* * * * *

6. In § 655.731, the second sentence of paragraph (a)(1) is proposed to be amended by adding the phrase ''job performance,'' after the phrase ''job responsibility and function,''.

7. In § 655.731, paragraph (a)(2)(iii)(A)(*1*) is proposed to continue to read as follows:

§ 655.731 The first labor condition statement: wages.

(a) * * *

(2) * * *

(iii) * * *

(A) * * *

(*1*) An employer who chooses to utilize a SESA prevailing wage determination shall file the labor condition application not more than 90 days after the date of issuance of such SESA wage determination. Once an employer obtains a prevailing wage determination from the SESA and files an LCA supported by that prevailing wage determination, the employer is deemed to have accepted the prevailing wage determination (both as to the occupational classification and wage) and thereafter may not contest the legitimacy of the prevailing wage determination through the Employment Service complaint system or in an investigation or enforcement action. Prior to filing the LCA, the employer may challenge a SESA prevailing wage determination through the Employment Service complaint system, by filing a complaint with the SESA. See 20 CFR part 658.410 *et seq.* Employers which challenge a SESA prevailing wage determination must obtain a final ruling from the Employment Service complaint system prior to filing an LCA based on such determination. In any challenge, the SESA shall not divulge any employer wage data which was collected under the promise of confidentiality.

* * * * *

8. In § 655.731, paragraph (b)(1) is proposed to be revised to read as follows:

§ 655.731 The first labor condition statement: wages.

* * * * *

(b) *Documentation of the wage statement.* (1) The employer shall develop and maintain documentation sufficient to meet its burden of proving the validity of the wage statement required in paragraph (a) of this section and attested to on Form ETA 9035. The documentation shall be made available to DOL upon request. Documentation shall also be made available for public

examination to the extent required by § 655.760(a) of this part. The employer shall also document that the wage rate(s) paid to H–1B nonimmigrant(s) is(are) no less than the required wage rate(s). The documentation shall include information about the employer's wage rate for all other employees for the specific employment in question at the place of employment, beginning with the date the labor condition application was submitted and continuing throughout the period of employment. The records shall be retained for the period of time specified in § 655.760 of this part. The payroll records for each such employee shall include:

(i) Employee's full name;

(ii) Employee's home address;

(iii) Employee's occupation;

(iv) Employee's rate of pay;

(v) Hours worked each day and each week by the employee if:

(A) The employee is paid on other than a salary basis; or

(B) The actual wage is expressed as an hourly rate; or

(C) With respect only to H–1B nonimmigrants, the prevailing wage is expressed as an hourly rate;

(vi) Total additions to or deductions from pay each pay period by employee; and

(vii) Total wages paid each pay period, date of pay and pay period covered by the payment by employee.

* * * * *

9. In § 655.731, paragraph (b)(3)(iii)(B)(*1*) is proposed to be revised to read as follows:

§ 655.731 The first labor condition statement: wages.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(B) * * *

(*1*) Reflect the weighted average wage paid to workers similarly employed in the area of intended employment;

* * * * *

10. In § 655.731, paragraph (c)(4) is proposed to be deleted and reserved.

11. In § 655.731, paragraph (c)(5) is proposed to be revised to read as follows:

§ 655.731 The first labor condition statement: wages.

* * * * *

(c) * * *

(5)(i) In accordance with the standards specified in paragraphs (c)(5)(ii) and (iii) of this section, an H–1B nonimmigrant shall receive the full wage which the LCA-filing employer is required to pay, beginning on the date when the nonimmigrant enters into employment with the employer and continuing throughout the nonimmigrant's period of employment. In the case of an H–1B nonimmigrant who has not yet entered into employment with an employer who has had approved a labor condition application and an H–1B petition for such nonimmigrant, the employer's obligation to pay wages in accordance with the standards specified in paragraphs (c)(5)(ii) and (iii) of this section shall begin 30 days after the date the nonimmigrant first is admitted into the U.S. pursuant to the petition, or 60 days after the date the nonimmigrant becomes eligible to work for the employer (if the nonimmigrant is present in the U.S. on the date of the approval of the petition).

(ii) If the H–1B nonimmigrant is in a nonproductive status for reasons such as training, lack of license, lack of assigned work or any other reason, the employer will be required to pay the salaried employee the full pro-rata amount due, or to pay the hourly-wage employee for a full-time week (40 hours or such other number of hours as the employer can demonstrate to be full-time employment for the occupation and area involved) at the required wage for the occupation listed on the LCA. If the employer's LCA carries a designation of ''part-time employment,'' the employer will be required to pay the nonproductive employee for at least the number of hours indicated on the I–129 petition filed by the employer with the INS. If during a subsequent enforcement action by the Administrator it is determined that an employee designated in the LCA as part-time was in fact working full-time or regularly working more hours than reflected on the I–129 petition, the employer will be held to the factual standard disclosed by the enforcement action.

(iii) If, however, during the period of employment, an H–1B nonimmigrant experiences a period of nonproductive status due to conditions unrelated to employment which take the nonimmigrant away from his/her duties at his/her voluntary request and convenience (*e.g.*, touring the U.S. prior to commencing performance of duties for employer, caring for ill relative) or render the nonimmigrant unable to work (*e.g.*, maternity leave, automobile accident which temporarily incapacitates the nonimmigrant), then the employer shall not be obligated to pay the required wage rate during that period, provided that the INS permits the employee to remain in the U.S. without being paid, and provided further that such period is not subject to payment under the employer's benefit plan or other statutes such as the Family and Medical Leave Act (29 U.S.C. 2601 *et seq.*) or the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

* * * * *

12. In § 655.731, paragraph (d)(2) is proposed to continue to read as follows:

§ 655.731 The first labor condition statement: wages.

* * * * *

(d) * * *

(2) In the event the Administrator obtains a prevailing wage from ETA pursuant to paragraph (d)(1) of this section, the employer may challenge the ETA prevailing wage only through the Employment Service complaint system. See 20 CFR part 658, subpart E. Notwithstanding the provisions of 20 CFR 658.421 and 658.426, the appeal shall be initiated at the ETA regional office level. Such challenge shall be initiated within 10 days after the employer receives ETA's prevailing wage determination from the Administrator. In any challenge to the wage determination, neither ETA nor the SESA shall divulge any employer wage data which was collected under the promise of confidentiality.

(i) Where the employer timely challenges an ETA prevailing wage determination obtained by the Administrator, the 30-day investigative period shall be suspended until the employer obtains a final ruling from the Employment Service complaint system. Upon such final ruling, the investigation and any subsequent enforcement proceeding shall continue, with ETA's prevailing wage determination serving as the conclusive determination for all purposes.

(ii) Where the employer does not challenge ETA's prevailing wage determination obtained by the Administrator, such determination shall be deemed to have been accepted by the employer as accurate and appropriate (both as to the occupational classification and wage) and thereafter shall not be subject to challenge in a hearing pursuant to § 655.835 of this part.

* * * * *

13. In § 655.734, paragraph (a)(1)(ii) is proposed to be revised to read as follows:

§ 655.734 The fourth labor condition statement: notice.

(a) * * *

(1) * * *

(ii) Where there is no collective bargaining representative, the employer shall, on or within 30 days before the date the labor condition application is

filed with ETA, provide a notice of the filing of the labor condition application. The notice shall indicate that H–1B nonimmigrants are sought; the number of such nonimmigrants the employer is seeking; the occupational classification; the wages offered; the period of employment; the location(s) at which the H–1B nonimmigrants will be employed; and that the labor condition application is available for public inspection at the employer's principal place of business in the U.S. or at the worksite. The notice shall also include the statement: ''Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor. Complaints alleging failure to offer employment to an equally or better qualified U.S. worker, or an employer's misrepresentation regarding such offer(s) of employment, may be filed with the Department of Justice, 10th Street & Constitution Avenue, N.W., Washington, D.C. 20530.'' The notice shall be provided in one of the two following manners:

(A) By posting a notice in at least two conspicuous locations at each place of employment where any H–1B nonimmigrant will be employed.

(*1*) The notice shall be of sufficient size and visibility, and shall be posted in two or more conspicuous places so that the employer's workers at the place(s) of employment can easily see and read the posted notice(s).

(*2*) Appropriate locations for posting the notices include, but are not limited to, locations in the immediate proximity of wage and hour notices required by 29 CFR 516.4 or occupational safety and health notices required by 29 CFR 1903.2(a).

(*3*) The notices shall be posted on or within 30 days before the date the labor condition application is filed and shall remain posted for a total of 10 days.

(*4*) Where the employer places any H–1B nonimmigrant(s) at one or more worksites not contemplated at the time of filing the application, but which are within the area of intended employment listed on the LCA, the employer is required to post notice(s) at such worksite(s) on or before the date any H–1B nonimmigrant begins work, which notice shall remain posted for a total of ten days.

(B) By providing electronic notification to employees in the occupational classification for which H–1B nonimmigrants are sought. Such notification shall be given on or before the date any H–1B nonimmigrant begins work, and shall be available to the affected employees for a total of ten days. Such notification shall be readily available to the affected employees. An employer may accomplish this by any means it ordinarily uses to communicate with its workers about job vacancies or promotion opportunities, including through its ''home page'' or ''electronic bulletin board'' to employees who have, as a practical matter, direct access to the home page or electronic bulletin board; or through E-Mail or an actively circulated electronic message such as the employer's newsletter. Where employees are not on the ''intranet'' which provides direct access to the home page or other electronic site but do have computer access readily available, the employer may provide notice to such workers by direct electronic communication such as E-Mail.

* * * * *

14. Section 655.735 is proposed to be revised to read as follows:

§ 655.735 Special provisions for short-term placement of H–1B nonimmigrants at place(s) of employment outside the area(s) of intended employment listed on labor condition application.

(a) Subject to the conditions specified in paragraph (b) of this section, an employer may place H–1B nonimmigrant(s) at worksite(s) (place(s) of employment) within areas of employment not listed on the employer's labor condition application(s) without filing new labor condition application(s) for the area(s) of intended employment which would encompass such worksite(s).

(b) The following restrictions must be fully satisfied by an employer which places H–1B nonimmigrant(s) at worksite(s) (place(s) of employment) within areas of employment not listed on the employer's labor condition application(s):

(1) The employer has fully satisfied the requirements of §§ 655.730 through 655.734 of this part with regard to worksite(s) located within the area(s) of intended employment listed on the employer's labor condition application(s).

(2) The employer shall not place, assign, lease, or otherwise contract out any H–1B nonimmigrant(s) to any worksite where there is a strike or lockout in the course of a labor dispute in the same occupational classification(s) as the H–1B nonimmigrant(s).

(3) For every day of the H–1B nonimmigrant's(s') placement outside the LCA-listed area of employment, the employer shall:

(i) Pay such worker(s) the required wage (based on the prevailing wage at such worker's(s') permanent work site, or the employer's actual wage, whichever is higher);

(ii) Pay such worker(s) the actual cost of lodging (for both workdays and non-workdays) up to the rate prescribed by the General Services Administration (''GSA'') for Federal Government employees on travel or temporary assignment, plus applicable taxes, as set out in 41 CFR Part 301–7 and Ch. 301, App. A.; and

(iii) Provide such worker(s) per diem for meals and incidental expenses (for both workdays and non-workdays) at rate(s) no lower than the rate(s) prescribed by the GSA as set out in 41 CFR Part 301–7 and Ch. 301, App. A.

(iv) Provide such worker(s) the actual cost of transportation expenses, except that where the worker uses a privately-owned vehicle, the employer must provide such worker(s) the cost to operate the vehicle at the rate(s) set out in 41 CFR Part 301–4, plus out-of-pocket expenses for miscellaneous expenses such as tolls and parking fees.

(4) The employer's placement(s) of H–1B nonimmigrant(s) at any worksite(s) in an area of employment not listed on the employer's labor condition application(s) shall be limited to a total of ninety workdays for any H–1B nonimmigrant within a three-year period. For purposes of this section, ''workday'' shall mean any day on which an H–1B nonimmigrant performs any work at any worksite(s) within the area of employment. For example, three workdays would be counted where a nonimmigrant works three non-consecutive days at three different worksites, whether or not the employer owns or controls such worksite(s), within the same area of employment.

(c) Once any H–1B nonimmigrant has worked 90 workdays in a three-year period in any area of employment, the employer may not continue to employ H–1B nonimmigrant(s) in the same occupational classification at any worksite(s) within the area of employment unless the employer has filed and received a certified labor condition application for the area(s) of intended employment encompassing such worksite(s) and performed all actions required in connection with such filing(s) (*e.g.*, determination of the prevailing wage; notice to collective bargaining representative; on-site notice to workers), whether or not the employer owns or controls such worksite(s).

(d) The employer may not continuously rotate H–1B nonimmigrants to an area of employment in a manner that would defeat the purpose of the short-term placement option, which is to provide the employer with enough time to file an LCA for areas where it intends to have a significant presence (*e.g.*, an employer may not rotate H–1B nonimmigrants to an area of employment for 60-day periods, with the result that nonimmigrants are continuously or virtually continuously employed in the area of employment, in order to avoid filing an LCA would be found to be in violation of these short-term placement provisions).

(e) The employer may at any time file a labor condition application for an area of intended employment, performing all actions required in connection with such labor condition application. Upon certification of such application, the employer's obligation to comply with paragraph (b)(3) shall terminate. (However, *see* § 655.731(c)(7)(iii)(C) regarding payment of business expenses for employee's travel on employer's business.)

15. Appendix A to Subpart H is proposed to be revised to read as follows:

Appendix A to Subpart H—Guidance for Determination of the ''Actual Wage''

In determining the required wage rate, in addition to obtaining the prevailing wage, the employer must establish the actual wage for the occupation in which the H–1B nonimmigrant is employed by the employer. For purposes of establishing its compensation system for workers in an occupational category, an employer may take into consideration objective standards relating to experience, qualifications, education, specific job responsibility and function, job performance, specialized knowledge, and other legitimate business factors. The use of any or all these factors is at the discretion of the employer. The employer must have and document an objective system used to determine the wages of non-H–1B workers, and apply that system to H–1B nonimmigrants as well. It is not sufficient for the employer simply to calculate an average wage of all non-H–1B employees in an occupation; the actual wage is not an ''average wage''.

The documents explaining the system must be maintained in the public disclosure file. The explanation of the compensation system must be sufficiently detailed to enable a third party to apply the system to arrive at the actual wage rate computed by the employer for any H–1B nonimmigrant. The computation of the H–1B nonimmigrant's individual actual wage rate must be documented in the H–1B nonimmigrant's personnel file.

Assuming the actual wage is higher than the prevailing wage and thus is the required wage rate, if an employer gives its employees a raise at year's end or if the system provides for other adjustments in wages, H–1B nonimmigrants must also be given the raise (consistent with legitimate employer-established criteria such as level of performance, attendance, etc.). This is consistent with Congressional intent that H–1B nonimmigrants and similarly employed U.S. workers be provided the same wages.

Where the employer's pay system or scale provides adjustments during the validity period of the LCA—*e.g.*, cost-of-living increase or other annual adjustments, increase in the entry-level rate for the occupation due to market forces, or the employee moves into a more advanced level in the same occupation—the employer shall retain documentation explaining the changes and clearly showing that, after such adjustments, the wages paid to the H–1B nonimmigrant are at least the greater of the adjusted actual wage or the prevailing wage for the occupation in the area of intended employment.

The following examples illustrate these principles:

(1) Worker A is paid $10.00 per hour and supervises two employees. Worker B, who is similarly qualified and performs substantially the same job duties except for supervising other employees, is paid $8.00 per hour because he/she has no supervisory responsibility.

The compensation differential is acceptable because it is based upon a relevant distinction in job duties, responsibilities, and functions: the difference in the supervisory responsibilities of the two employees. The actual wage in this occupation at the worksite for workers with supervisory responsibility is $10.00 per hour; the actual wage in this occupation at the worksite for workers without supervisory responsibility is $8.00 per hour.

(2) Systems Analyst A has experience with a particular software which the employer is interested in purchasing, of which none of the employer's current employees have knowledge. The employer buys the software and hires Systems Analyst A on an H–1B visa to train the other employees in its application. The employer pays Systems Analyst A more than its other Systems Analysts who are otherwise similarly qualified.

The compensation differential is acceptable because of the distinction in the specialized knowledge and the job duties of the employees. Systems Analyst A, in addition to the qualifications and duties normally associated with this occupation at the employer's worksite, is also specially knowledgeable and responsible for training the employer's other Systems Analysts in a new software package. As a result, Systems Analyst A commands a higher actual wage. However, if the employer employs other similarly qualified systems analysts who also have unique knowledge and perform similar duties in training other analysts in their area of expertise, the actual wage for Systems Analyst A would have to be at least equivalent to the actual wage paid to such similarly employed analysts.

(3) An employer seeks a scientist to conduct AIDS research in the employer's laboratory. Research Assistants A (a U.S. worker) and B (an H–1B nonimmigrant) both hold Ph.D's in the requisite field(s) of study and have the same number of years of experience in AIDS research. However, Research Assistant A's experience is on the cutting edge of a breakthrough in the field and his/her work history is distinguished by frequent praise and recognition in writing and through awards. Research Assistant B (the nonimmigrant) has a respectable work history but has not conducted research which has been internationally recognized. Employer pays Research Assistant A $10,000 per year more than Research Assistant B in recognition of his/her unparalleled expertise and accomplishments. The employer now wants to hire a third Research Assistant on an H–1B visa to participate in the work.

The differential between the salary paid Research Assistant A (the U.S. worker) and Research Assistant B (an H–1B nonimmigrant) is acceptable because it is based upon the specialized knowledge, expertise and experience of Research Assistant A, demonstrated in writing. The employer is not required to pay Research Assistant B the same wage rate as that paid Research Assistant A, even though they may have the same job titles. The actual wage required for the third Research Assistant, to be hired on an H–1B visa, would be the wage paid to Research Assistant B unless he/she has internationally recognized expertise similar to that of Research Assistant A. As set out in § 655.731(1)(A) the employer must have and document the system used in determining the actual wage of H–1B nonimmigrants. The explanation of the system must be such that a third party may use the system to arrive at the actual wage paid the H–1B nonimmigrant.

(4) Employer located in City X seeks experienced mechanical engineers. In City X, the prevailing wage for such engineers is $49,500 annually. In setting the salaries of U.S. workers, employer pays its nonsupervisory mechanical engineers with 5 to 10 years of experience between $50,000 and $75,000 per year, using defined pay scale ''steps'' tied to experience. Employer hires engineers A, B, and C, who each have five years of experience and similar qualifications and will perform substantially the same nonsupervisory job duties. Engineer A is from Japan, where he/she earns the equivalent of $80,000 per year. Engineer B is from France and had been earning the equivalent of $50,000 per year. Engineer C is from India and had been earning the equivalent of $20,000 per year. Employer pays Engineer A $80,000 per year, Engineer B $50,000, and Engineer C $20,000 as the employer has had a long-established system of maintaining the home-country pay levels of temporary foreign workers.

The INA requires that the employer pay the H–1B nonimmigrant at least the actual wage or the prevailing wage, whichever is greater, but there is no prohibition against paying an H–1B nonimmigrant a greater wage. Therefore, Engineer A may lawfully be paid the $80,000 per year. Engineer B's salary of $50,000 is acceptable, since this is the employer's actual wage for an engineer with Engineer B's experience and duties. Engineer

C's salary, however, at a rate of $20,000 per year, is unacceptable under the law, even given the employer's ''long-established 'home country' system,'' since $20,000 would be below both the actual wage and the prevailing wage. The latter situation is an example of an illegitimate business factor, *i.e.*, a system to maintain salary parity with peers in the country of origin, which yields a wage below the required wage levels.

16. A new Appendix B to Subpart H is proposed to be added, to read as follows:

Appendix B to Subpart H—Guidance for Determination of the ''Place of Employment'' and Other Matters.

a. ''Place of employment'' or ''worksite.''

The regulation defines ''place of employment'' as ''the worksite or physical location where the work actually is performed'' (§ 655.715). The Department recognizes that some H–1B employers have expressed a concern that a strict or literal application of this definition might lead to absurd and/or unduly burdensome compliance requirements, particularly with regard to the employer providing required notices and adjusting the H–1B worker's wages to comport with different prevailing wages for various locations. These employers have inquired whether the ''worksite'' definition would be applicable where, for example, an H–1B worker has a business lunch at a local restaurant, or appears as a witness in a court, or attends a training seminar at an out-of-town hotel.

1. The term ''place of employment'' or ''worksite'' (defined as ''physical location where the work actually is performed'') is interpreted by the Department as not including any location where either of the following criteria—1 or 2—is satisfied:

i. Employee developmental activity. An H–1B worker who is stationed and regularly works at one location may temporarily be at another location for a particular individual or employer-required developmental activity such as a management conference, a staff seminar, a business meeting or a formal training course (other than ''on-the-job-training'' at a location where the employee is stationed and regularly works). For the H–1B worker participating in such activities, the location of the activity would not be considered a ''place of employment'' or ''worksite,'' and that worker's presence at such location—whether owned or controlled by the employer or by a third party—would not invoke H–1B program requirements with regard to that employee at that location. However, if the employer uses H–1B nonimmigrants as instructors or resource or support staff who continuously or regularly perform their duties at such locations, the locations would be ''places of employment'' or ''worksites'' for any such employees and, thus, would be subject to H–1B program requirements with regard to those employees.

ii. Employee's job functions. The nature and duration of an H–1B worker's job functions may necessitate frequent changes of location with little time spent at any one location. For such a worker, a location would not be considered a ''place of employment'' or ''worksite'' if the following 3 requirements are all met—

A. The nature and duration of the H–1B worker's job functions mandates his/her short-time presence at the location. For this purpose, either the H–1B worker's job must be peripatetic in nature, in that the normal duties of the worker's occupation (rather than the nature of the employer's business) requires frequent travel (local or non-local) from location to location; or the H–1B worker's duties must require that he/she spend most work time at one location but occasionally travel for short periods to work at other locations; and

B. The H–1B worker's presence at the locations to which he/she travels from the ''home'' worksite is on a casual, short-term basis, which can be recurring but not excessive (*i.e.*, not exceeding five consecutive workdays for any one visit); and

C. The H–1B worker is not at the location as a ''strikebreaker'' (*i.e.*, not performing work in an occupation in which workers are on strike or lockout).

2. Examples of ''non-worksite'' locations based on worker's job functions: a computer engineer sent out to customer locations to ''troubleshoot'' complaints regarding software malfunctions; a sales representative making calls on prospective customers or established customers within a ''home office'' sales territory; a manager monitoring the performance of out-stationed employees; an auditor providing advice or conducting reviews at customer facilities; a physical therapist providing services to patients in their homes within an area of employment; an individual making a court appearance; an individual lunching with a customer representative at a restaurant; or an individual conducting research at a library.

3. Examples of ''worksite'' locations based on worker's job functions: a computer engineer who works on projects or accounts at different locations for weeks or months at a time; a sales representative assigned on a continuing basis in an area away from his/her ''home office;'' an auditor who works for extended periods at the customer's offices; a physical therapist who ''fills-in'' for full-time employees of health care facilities for extended periods; or a physical therapist who works for a contractor whose business is to provide staffing on an ''as needed'' basis at hospitals, nursing homes, or clinics.

4. Whenever an H–1B worker performs work at a location which is not a ''worksite'' (under either criterion above), that worker's ''place of employment'' or ''worksite'' for purposes of H–1B obligations is the worker's home station or regular work location. The employer's obligations regarding notice, prevailing wage and working conditions are focused on the home station ''place of employment'' rather than on the above-described location(s) which do not constitute worksite(s) for these purposes.

5. In applying this interpretation of ''place of employment'' or ''worksite,'' the Department will look carefully at situations which appear to be contrived or abusive. The Department would seriously question any situation where the H–1B worker's purported ''place of employment'' is a location other than where the worker spends most of his/her work time, or where the purported ''area of employment'' does not include the location(s) where the worker spends most of his/her work time. For example, where an H–1B worker is nominally ''home-based'' in City A and is claimed by the employer to be covered by the LCA for City A, but spends most of his/her time in City B, going from one customer location to another, the Department would consider City B to be the worker's ''area of employment'' and, further, would expect the employer to have a certified LCA for City B and be in compliance with all of the program requirements under that LCA.

6. The Department's interpretation of the regulation will not result in absurd or unduly burdensome situations, and should alleviate the legitimate concerns of employers seeking to comply with the requirements of the H–1B program. However, employers should carefully note that whether or not a location is considered to be a ''worksite''/''place of employment'' for an H–1B worker, the employer is required to provide reimbursement to the H–1B worker for expenses incurred in traveling to that location on the employer's business, since such expenses are considered to be ordinary business expenses of employers which may not be transferred to employees (§§ 655.731(c)(7)(iii)(C); 655.731(c)(9)).

b. ''Roving'' or ''floating'' H–1B employees.

The statute and regulations do not permit the employment of H–1B workers as ''roving'' or ''floating'' employees for whom no particular LCA (and thus no specific set of LCA requirements) would be applicable. While H–1B workers may move about (''floating'' or ''roving'' from their ''homebase'' worksites), they are subject to the following restrictions and standards.

(1) Employers are advised that, under the H–1B program, every H–1B worker is protected by an LCA, and no H–1B worker is legally permitted to ''rove'' or ''float'' without an applicable LCA prescribing the employer's obligations as to notice, wages, and all other program requirements for that worker. Every H–1B worker has a ''home station,'' ''home office,'' or ''home base,'' regardless of frequency of travel or variation in job duties. The LCA for the worker's ''home station'' area of employment prescribes the employer's obligations as to that worker, unless or until an LCA for some other area of employment becomes applicable due to the nature and duration of the worker's presence at worksite(s) in that other area.

(2) Employers are cautioned that an H–1B worker may legitimately and legally be dispatched from his/her home station worksite—thus, ''rove'' or ''float'' from that worksite—only in the following three circumstances:

(i) Dispatch to non-worksite location(s). An H–1B employee may leave his/her home station worksite to perform job functions at location(s) which do not constitute ''worksites(s)'' within the regulatory definition as interpreted by the Department (*see* subparagraph (a), above). The employer's obligations as to that H–1B worker for work time at that non-worksite location (*e.g.*, wages; travel expenses) are prescribed by the LCA for the worker's home station area of employment, even if the non-worksite

location is within an area of employment covered by a different LCA.

(ii) Dispatch to worksite(s) within area(s) of employment covered by LCA(s). An H–1B worker may leave his/her home station worksite to perform job functions at worksite(s) within the same area of employment and thus covered by the same LCA already applicable for that employee, or at worksite(s) in some other area of employment covered by a different LCA. The employer's obligations as to that H–1B worker for that work time (*e.g.*, wages, travel expenses) are prescribed by the home station LCA unless the worker is permanently reassigned to the new area or is dispatched to that area for an extended period of time (to be determined case-by-case, depending on the nature of the employee's job functions and the employer's operations in the area). When a different LCA becomes applicable for the employee, the employer would be required to assure compliance with that LCA (*e.g.*, wage adjustments, if appropriate).

(iii) Dispatch to worksite(s) not covered by any LCA, pursuant to short-term placement option. An H–1B worker may leave his/her home station worksite to perform job functions at worksite(s) not covered by any LCA, provided the placement of the worker at such worksite(s) is in compliance with the short-term placement option (§ 655.735).

c. Attorney fees and H–1B petition fees as employer's business expense.

(1) Under the regulations, an employer is not permitted to impose its business expense(s) on its H–1B workers (§§ 655.731(c)(7)(iii)(C); 655.731(c)(9)). To the extent that an employer shifts any portion of business expense(s) to an H–1B worker, that action constitutes a failure by the employer to satisfy the required wage obligation to that worker, regardless of whether the required wage is the employer's actual wage rate or the local prevailing wage rate.

(2) The employer's business expenses include costs incurred in the filing of an LCA with ETA and of an H–1B petition with INS (regardless of whether the INS filing is to bring an H–1B nonimmigrant into the U.S., or to amend, change, or extend an H–1B nonimmigrant's visa status). These filing functions are legal obligations of the employer; the employer is required by law to perform these functions and the H–1B nonimmigrant is not permitted by law to do so. Performance of such a legal obligation is necessarily an integral part of the employer's administration of its business. Therefore, any costs associated with such filings—including attorney fees—are business expenses to be borne by the employer. The regulations prohibit the employer from shifting such expenses to the H–1B worker(s), either directly (*e.g.*, by the employer paying an attorney's fees and then recouping the costs through deduction from the worker's wages) or indirectly (*e.g.*, by the employer requiring or encouraging the worker to pay for an attorney's services to perform these functions). Some employers have contended that they have experienced situations in which prospective H–1B nonimmigrants have demanded the responsibility for obtaining and paying the attorney who prepares the LCA and H–1B petition. Employers are cautioned that their business expenses are not to be paid by the nonimmigrant, and that an employer cannot acquiesce to the nonimmigrant's ''demand for responsibility'' which amounts to shifting the employer's legal responsibilities to the nonimmigrant.

(3) *Bona fide* costs in connection with visa functions which are required by law to be performed by the nonimmigrant (*e.g.*, translation fees and other costs relating to visa application and processing for prospective nonimmigrant residing outside the U.S.) do not constitute and will not be considered to be an employer's business expense. The Department will, however, look behind what appear to be contrived allocations of costs—such as attorney's fees for preparing the H–1B LCA and/or H–1B petition being assigned to the nonimmigrant's visa application or to petitions for the nonimmigrant's family members—should such situations appear to be occurring.

d. SCA wage determinations as prevailing wage.

(1) Under the regulation, if there is a Service Contract Act (''SCA'') wage determination for the occupational classification in the area of employment, that SCA wage determination is considered by the Department to constitute the prevailing wage for that occupation in that area (§ 655.731(a)(2)(i) and (iii)(A)). Therefore, the SCA wage rate will be issued by the SESA in response to a request for a prevailing wage determination and should be used by the employer in the event that the employer chooses to determine the prevailing wage without consulting the SESA. However, where an SCA wage determination for an occupational classification in the computer industry states a rate of $27.63, that rate will not be issued by the SESA and may not be used by the employer as the prevailing wage; that rate does not represent the actual prevailing wage but, instead, is reported by the Wage and Hour Division in the SCA determination merely as an artificial ''wage cap'' as contemplated by an SCA exemption provision (*see* 29 CFR 4.156; 541.3). In such circumstances, the SESA and the employer must consult another source for wage information (*e.g.*, Bureau of Labor Statistics report).

(2) For purposes of the determination of the H–1B prevailing wage for an occupational classification through the use of an SCA wage determination, it is irrelevant whether a particular job or particular worker would be exempt from the SCA wage determination in the performance of an SCA contract, through application of the SCA/FLSA ''professional employee'' exemption test (*i.e.*, duties and compensation; see 29 CFR 4.156; 541.3). Thus, in issuing the SCA wage rate as the prevailing wage determination for the occupational classification, the SESA will not consider questions of employee exemption, and in an enforcement action, the Department will consider the SCA wage rate to be the prevailing wage without regard to whether any particular H–1B employee(s) could be exempt from that wage as SCA contract workers under the SCA/FLSA exemption. An employer who employs H–1B employee(s) to perform services under an SCA-covered contract may find that the H–1B employees are required to be paid the SCA rate as the H–1B prevailing wage even though non-H–1B employees performing the same services may be exempt from the SCA rate pursuant to the SCA regulation.

e. ''CMSA'' and ''PMSA.''

(1) There is some possibility for confusion regarding the appropriate interplay among several concepts or terms—area of intended employment, area of employment, metropolitan statistical area (''MSA''), primary metropolitan statistical area (''PMSA''), and consolidated metropolitan statistical area (''CMSA''). The following clarification is intended to alleviate any confusion and to facilitate compliance with H–1B program requirements.

(2) For purposes of determining the applicable locally prevailing wage under the H–1B program, the procedures at 20 CFR 656.40, governing the Permanent Alien Labor Certification Program, are to be used. Section 656.40(a)(2)(i) ties the prevailing wage to the ''area of intended employment.'' ''Area of intended employment'' is defined at 20 CFR § 656.3 as:

''* * * the area within normal commuting distance of the place (address) of intended employment. If the place of intended employment is within a Metropolitan Statistical Area (MSA), any place within the MSA is deemed to be within normal commuting distance of the place of intended employment.''

Pursuant to 44 U.S.C. 3504(d)(3), 31 U.S.C. 1104(d), and Executive Order No. 10,253 (June 11, 1951), the Office of Management and Budget (OMB) defines MSAs and PMSAs for use in Federal statistical activities. The Department takes the position that where a worksite is within an MSA or PMSA as defined by OMB, any other location within the MSA or PMSA shall be deemed to be within normal commuting distance of the worksite and, therefore, within the area of intended employment for purposes of both the permanent and H–1B programs. Thus, one prevailing wage determination for an occupational classification would be applicable throughout an MSA or PMSA. However, this concept of ''commuting distance'' for prevailing wage purposes is not extended to all locations within a CMSA, because the Department has determined, based on its operational experience, that CMSAs can be too geographically broad for this purpose. Thus, all locations within a CMSA will not automatically be deemed to be within ''normal commuting distance.'' This does not mean, however, that a location outside of an MSA, PMSA, or for that matter a CMSA, cannot be ''within normal commuting distance'' of a worksite that is, for example, close to the border of the MSA and adjacent to the other location.

(3) The Department has not adopted any rigid measure of distance involved in a ''normal commuting area'' (*e.g.*, 20, 30, 50 miles), because, in the Department's view, it is necessary that the concept afford sufficient flexibility to be able to reflect widely varying factual circumstances among different locations.

f. ''Weighted average'' in determining prevailing wages.

(1) The regulation requires that a legitimate source of wage information (other than one specified in the regulations such as a SESA determination or an independent authoritative source) must ''reflect the weighted average wage paid to workers similarly employed in the area of intended employment'' (§ 655.731(b)(3)(iii)(C)(*1*)). The regulation also requires that an independent authoritative source must ''reflect the average wage paid to workers similarly employed in the area of intended employment'' (§ 655.731(b)(3)(iii)(B)(*1*)). Because the word ''weighted'' was left out of the subparagraph dealing with independent authoritative sources, there have been some suggestions of confusion as to whether use of a weighted average of wages for an occupational classification is necessary only when the employer uses ''another legitimate source'' of wage information.

(2) When used in a statistical sense, the word ''average'' ordinarily refers to the arithmetic mean; *i.e.*, a weighted average. The Department has always required that a weighted average be used in determining the prevailing wage (except where either the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act applies). It is DOL's long-standing position—because Congress expressly stated that prevailing wages for the H–1B program are to be determined in accordance with the methodology used for the permanent employment-based immigration program, which produces a weighted average—that the H–1B employer's prevailing wage determination must be based on a weighted average. (*See* 20 CFR 656.40(a)(2)(i).) The word ''weighted'' was inadvertently omitted from § 655.731(b)(3)(iii)(B)(*1*).

g. Effect of New LCA on Prevailing Wage Obligation Under Old LCA.

(1) There is some possibility for confusion regarding the prevailing wage obligation of an employer which has filed more than one LCA for the same occupational classification in the same area of employment. In such circumstances, the employer could have H–1B employees in the same occupational classification in the same area of employment, brought into the U.S. (or accorded H–1B status) based on petitions approved pursuant to different LCAs (filed at different times) with different prevailing wage determinations. Employers are advised that the prevailing wage rate as to any particular H–1B nonimmigrant is prescribed by the LCA which supports that nonimmigrant's H–1B petition. The regulations require that the employer obtain the prevailing wage at the time that the LCA is filed (§ 655.731(a)(2)). The LCA is valid for the period certified by ETA, and the employer must satisfy all the LCA's requirements (including the ''required wage'' which encompasses both prevailing and actual wage rates) for as long as any H–1B nonimmigrants are employed pursuant to that LCA (§ 655.750). Where new nonimmigrants are employed pursuant to a new LCA, that new LCA prescribes the employer's obligations as to those new nonimmigrants. The prevailing wage determination on the later/subsequent LCA does not ''relate back'' to operate as an ''update'' of the prevailing wage for the previously-filed LCA for the same occupational classification in the same area of employment.

(2) Employers are cautioned that the actual wage component of the ''required wage'' may, as a practical matter, eliminate any wage-payment differentiation among H–1B employees based on different prevailing wage rates stated in applicable LCAs. Every H–1B worker is to be paid in accordance with the employer's actual wage system, and thus is to receive any pay increases which that system provides.

Subpart I—Enforcement of H–1B Labor Condition Applications

17. § 655.800 is proposed to be revised to read as follows:

§ 655.800 Enforcement authority of Administrator, Wage and Hour Division.

(a) Authority of Administrator. Except as provided in § 655.806 of this part, the Administrator shall perform all the Secretary's investigative and enforcement functions under section 212(n) of the INA (8 U.S.C. 1182(n)) and subparts H and I of this part.

(b) Conduct of Investigations. The Administrator, either pursuant to a complaint or otherwise, shall conduct such investigations as may be appropriate and, in connection therewith, enter and inspect such places and such records (and make transcriptions or copies thereof), question such persons and gather such information as deemed necessary by the Administrator to determine compliance regarding the matters which are the subject of the investigation.

(c) Availability of Records. An employer being investigated shall make available to the Administrator such records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. No employer subject to the provisions of section 212(n) of the INA (8 U.S.C. 1182(n)) and/or subpart H or I of this part shall interfere with any official of the Department of Labor performing an investigation, inspection or law enforcement function pursuant to 8 U.S.C. 1182(n) or subpart H or I of this part. Any such interference shall be a violation of the labor condition application and these regulations, and the Administrator may take such further actions as the Administrator considers appropriate. (*Note*: Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 18 U.S.C. 1114.)

(d) Employee Protection. (1) No employer subject to subpart H or I of this part shall intimidate, threaten, restrain, coerce, blacklist, discharge or in any other manner discriminate against an employee (which term includes a former employee or an applicant for employment) because the employee has

(i) Disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of section 212(n) of the INA or subpart H or I of this part; or

(ii) Cooperated or sought to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of section 212(n) of the INA or subpart H or I of this part.

(2) It shall be a violation of § 655.805(a)(12) of this part for any employer to engage in such retaliatory conduct. Such conduct shall be subject to the penalties prescribed by section 212(n)(2)(C)(ii) of the INA and § 655.810 of this part, i.e., a fine of up to $5,000 and debarment for at least two years, and such further action as the Administrator considers appropriate.

(3) An employee who has filed a complaint alleging that an employer has discriminated against the employee in violation of paragraph (d)(1) of this section may be allowed to seek other appropriate employment in the United States, provided the employee is otherwise eligible to remain and work in the United States. Such employment may not exceed the maximum period of stay authorized for a nonimmigrant classified under section 212(n) of the INA (8 U.S.C. 1182(n)).

(e) Confidentiality. The Administrator shall, to the extent possible under existing law, protect the confidentiality of any person who provides information to the Department in confidence in the course of an investigation or otherwise under subpart H or I of this part.

18. Section 655.805 is proposed to be revised to read as follows:

§ 655.805 Complaints and investigative procedures.

(a) The Administrator shall receive allegations that an employer subject to subpart H or I of this part has violated section 212(n) of the INA or these regulations from any aggrieved party (as defined at § 655.715 of this part, including a government agency other than the Labor Department) or other sources where these sources meet the conditions prescribed by § 655.806 of this part, and shall conduct such investigations as may be appropriate in accordance with § 655.806 of this part (pertaining to allegations from other sources), § 655.807 of this part (pertaining to spot investigations), or as the Administrator, on his or her own

initiative, directs. In conducting such investigations, the Administrator shall determine whether an H–1B employer has:

(1) Filed a labor condition application with ETA which misrepresents a material fact; (Note: Federal criminal statutes provide penalties of up to $10,000 and/or imprisonment of up to 5 years for knowing and willful submission of false statements to the Federal Government. 18 U.S.C. 1001; see also 18 U.S.C. 1546);

(2) Failed to pay wages as required under § 655.731 of this part (including payment of wages for certain nonproductive time), for purposes of the assessment of back wages;

(3) Failed to provide fringe benefits and other working conditions as required under § 655.732 of this part;

(4) Filed a labor condition application for H–1B nonimmigrants during a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment (see § 655.733 of this part);

(5) Failed to provide notice of the filing of the labor condition application as required in § 655.734 of this part;

(6) Failed to be specific on the labor condition application as to the number of workers sought, the occupational classification in which the H–1B nonimmigrants will be employed, or the wage rate and conditions under which the H–1B nonimmigrants will be employed;

(7) Failed to comply with the displacement protections for U.S. workers (if applicable);

(8) Failed to make the required displacement inquiry provision of another employer (if applicable);

(9) Failed to take good faith steps in recruitment (if applicable);

(10) Required, accepted, or attempted to require an employee to remit to the employer payment for any part of the additional $500 fee incurred in filing a petition in connection with the employee's visa (if applicable);

(11) Required or attempted to require an employee to pay a penalty for ceasing employment prior to an agreed upon date (see § 212(n)(2)(C)(vi)(I) of INA);

(12) Discriminated against an employee as prohibited by § 655.800(d) of this part;

(13) Failed to make available for public examination the application and necessary document(s) at the employer's principal place of business or worksite as required in § 655.760(c) of this part;

(14) Failed to retain documentation as required by § 655.760(c) of this part; and (15) Failed otherwise to comply in any other manner with the provisions of subpart H or I of this part.

(b) Failures pertaining to the violations (a)(1) through (a)(9) may be cited as ''willful'' failures. Failures pertaining to the violations (a)(5), (6), and (9) may be cited as ''substantial'' failures. The determination letter (see § 655.815 of this part) shall specifically cite the appropriate finding and the requirement to notify the Attorney General and the Employment and Training Administration as required for purposes of debarment. See section 655.855 of this part.

(c) For purposes of this part, ''willful failure'' means a knowing failure or a reckless disregard with respect to whether the conduct was contrary to section 212(n)(1)(A)(i) or (ii) of the INA, or §§ 655.731 or 655.732 of this part. See *McLaughlin* v. *Richland Shoe Co.*, 486 U.S. 128 (1988); see also *Trans World Airlines* v. *Thurston*, 469 U.S. 111 (1985).

(d) Pursuant to §§ 655.740(a)(1) and 655.750 of this part, the provisions of this part become effective upon the date of ETA's notification that the employer's labor condition application is certified, whether or not the employer hires any H–1B nonimmigrants in the occupation for the period of employment covered in the labor condition application. Should the period of employment specified in the labor condition application expire or should the employer withdraw the application in accordance with § 655.750(b) of this part, the provisions of this part will no longer be in effect with respect to such application, except as provided in § 655.750(b)(3) and (4) of this part.

(e) Any aggrieved person or organization (including bargaining representatives and governmental officials) may file a complaint alleging a violation described in paragraph (a) of this section. The procedures for filing a complaint and its processing by the Administrator are set forth in this section. Other persons with information regarding an employer's alleged violation of section 212(n) of the INA or subpart H or I of this part instead should follow the requirements of § 655.806 of this part. With regard to complaints filed by any aggrieved person or organization—

(1) No particular form of complaint is required, except that the complaint shall be written or, if oral, shall be reduced to writing by the Wage and Hour Division official who receives the complaint.

(2) The complaint shall set forth sufficient facts for the Administrator to determine whether an investigation is warranted, in that there is reasonable cause to believe that a violation as described in paragraph (a) of this section has been committed. This determination shall be made within 10 days of the date that the complaint is received by a Wage and Hour Division official. If the Administrator determines that the complaint fails to present reasonable cause for an investigation, the Administrator shall so notify the complainant, who may submit a new complaint, with such additional information as may be necessary. No hearing pursuant to this subpart shall be available where the Administrator determines that an investigation on a complaint is not warranted.

(3) If the Administrator determines that an investigation on a complaint is warranted, the complaint shall be accepted for filing; an investigation shall be conducted and a determination issued within 30 calendar days of the date of filing.

(4) In the event that the Administrator seeks a prevailing wage determination from ETA pursuant to § 655.731(d) of this part, or advice as to prevailing working conditions from ETA pursuant to § 655.732(c)(2) of this part, the 30-day investigation period shall be suspended from the date of the Administrator's request to the date of the Administrator's receipt of the wage determination (or, in the event that the employer challenges the wage determination through the Employment Service complaint system, to the date of the completion of such complaint process).

(5) A complaint must be filed not later than 12 months after the latest date on which the alleged violation(s) were committed, which would be the date on which the employer allegedly failed to perform an action or fulfill a condition specified in the LCA, or allegedly took an action which, through such action or inaction, demonstrates a misrepresentation of a material fact in the LCA regarding such action or inaction. This jurisdictional bar does not affect the scope of the remedies which may be assessed by the Administrator. Where, for example, a complaint is timely filed, back wages may be assessed for a period prior to one year before the filing of a complaint.

(6) A complaint may be submitted to any local Wage and Hour Division office. The addresses of such offices are found in local telephone directories. The office or person receiving such a complaint shall refer it to the office of the Wage and Hour Division administering the area in which the reported violation is alleged to have occurred.

(f) When an investigation has been conducted, the Administrator shall, pursuant to § 655.815 of this part, issue

a written determination as to whether or not any violation(s) as described in paragraph (a) of this section has been committed.

19. A new § 655.806 is proposed to be added, to read as follows:

§ 655.806 Allegations of employer violations by persons other than aggrieved parties.

(a) Sources other than aggrieved parties may submit information alleging that an employer may have violated section 212(n) of the INA or these regulations by committing a willful failure to meet certain of the conditions prescribed by section 212(n)(2)(G)(i) of the INA. Such information should be submitted to the Administrator by contacting any local Wage and Hour Division office. The Administrator shall receive and process such information in accordance with this subsection, subject to the personal determination by the Secretary or the Acting Secretary pursuant to paragraph (e) of this section as to whether an investigation should be commenced based on the information.

(b) Information from sources other than aggrieved parties must be submitted not later than 12 months after the latest date on which the alleged violation(s) were committed. The 12-month period shall be applied in the manner described in § 655.805(e)(5) of this part.

(c) In submitting information, sources other than aggrieved parties are encouraged to utilize the form provided by the Administrator for this purpose. The Administrator will prepare the form where the source provides information but does not utilize the form.

(d) Where the Administrator receives information from a source other than an aggrieved party, the Administrator (by mail or facsimile transmission) shall notify the employer that the information has been received, describe the nature of the allegation in sufficient detail to permit the employer to respond (but without providing the identity of the source), and request that the employer respond to the allegation within 10 days of its receipt of the notification. The Administrator may dispense with such notification if the Administrator determines that such notification might interfere with an effort to secure the employer's compliance.

(e) Upon the receipt of such information and review of the employer's response, if any, to the allegations, the Administrator will determine whether the allegations should be referred to the Secretary (or the Acting Secretary in the case of the Secretary's absence or disability) for a determination whether an investigation should be commenced by the Administrator. The Administrator may request authorization to commence an investigation where the following conditions are satisfied:

(1) The source of the information identifies himself or herself;

(2) The source likely possesses knowledge of the employer's practices or employment conditions or the employer's compliance with the with the requirements of this part;

(3) The source has provided specific credible information alleging a violation of the requirements of this part;

(4) The information provided is other than the information submitted by the employer to the Attorney General or the Secretary in securing the employment of an H–1B nonimmigrant;

(5) The information originated from a source other than an officer or employee of the Department of Labor, or, if it originated from an officer or employee of the Department of Labor, it was obtained in the course of a lawful investigation; and (6) The information in support of the allegations provides reasonable cause to believe that an employer has

(i) Willfully failed to meet a condition established by—

(A) Section 655.731 of this part relating to wages or § 655.732 of this part relating to working conditions;

(B) Section 655.733 of this part relating to strikes or lockouts;

(C) Section 655.———of this part relating to the displacement of U.S. workers (see Section 212(n)(1)(E) of INA); [1]

(D) Section 655.——— of this part relating to displacement of U.S. workers by receiving employer (see Section 212(n)(1)(F) of INA); or

(E) Section 655.——— of this part relating to recruitment of qualified U.S. workers (see Section 212(n)(1)(G)(i)(I)); or

(ii) Engaged in a pattern or practice of failures to meet a condition contained in subparagraph 6(i); or

(iii) Committed a substantial failure, affecting multiple employees, to meet a condition contained in paragraph (e)(6)(i) of this section.

(f) No investigation pursuant to this section will be commenced unless the Administrator requests authorization from the Secretary (or the Acting Secretary under the circumstances noted above) and the Secretary or the Acting Secretary personally certifies that the conditions listed in § 655.806(d) of this part have been met. If the Secretary issues a certification, an investigation shall be conducted and a determination issued within 30 days after the certification is received by the local Wage and Hour office undertaking the investigation.

(g) No hearing shall be available from a decision by the Administrator declining to refer allegations addressed by this section to the Secretary; and none shall be available from a decision by the Secretary certifying or declining to certify that an investigation is warranted.

(h) If following the Secretary's certification, the Administrator determines that a reasonable basis exists for a determination that the employer has violated a requirement of subpart H or I of this part, the Administrator shall notify the employer and other interested parties of the Administrator's determination and their right to a hearing, subject to the limitation established by paragraph (f) of this section, under the procedure prescribed in § 655.815 of this part.

(i) The identity of the source of information submitted to the Administrator shall not be disclosed.

(j) This section shall expire on October 1, 2001 unless section 212(n)(2)(G) of the INA is extended by future legislative action.

20. A new § 655.807 is proposed to be added, to read as follows:

§ 655.807 Authority to investigate employers found to have committed willful violations

(a) The Administrator may conduct random investigations of an employer during a five-year period beginning on the date of one of the following findings (on or after October 21, 1998, the date of the enactment of the ACWIA)—

(1) A finding by the Secretary that the employer willfully failed to meet a condition of section 212(n) of the INA (pertaining to attestations in the labor condition application; *see* § 655.730 *et seq.* of subpart H);

(2) A finding by the Secretary that the employer willfully misrepresented material fact(s) in a labor condition application (*see* § 655.730 *et seq.* of subpart H); or

(3) A finding by the Attorney General that the employer willfully failed to meet the condition of section 212(n)(1)(G)(i)(II) of the INA (pertaining to an offer of employment to an equally or better qualified U.S. worker).

(b) Where the Administrator undertakes such an investigation, the Administrator shall issue a determination in the manner provided by § 655.805(e) and § 655.815 of this part.

[1] **Note:** The sections referenced in § 655.806(e)(6)(i)(C) through (E) are under development. See discussion in the preamble.

(c) The Administrator's authority to undertake such investigations does not affect the Administrator's authority to undertake investigations under other circumstances (*see* §§ 655.805; 655.806).

20. Section 655.810 is proposed to be revised to read as follows:

§ 655.810 Remedies.

(a) Upon determining that an employer has failed to pay wages as required by § 655.731 of this part, the Administrator shall assess and oversee the payment of back wages to any H–1B nonimmigrant employed by the employer in the specific employment in question. The back wages shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such nonimmigrant(s). The Administrator may appropriately impose an administrative remedy or order for any violation of the Act.

(b) The Administrator may assess appropriate administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per violation) for the following violations:

(1) A failure pertaining to strike/lockout, displacement, or contractor inquiry;

(2) A substantial failure pertaining to notification, labor condition application specificity, or recruitment; or

(3) A misrepresentation of material fact on the labor condition application.

(c) The Administrator may assess a civil monetary penalty of $1,000—and also issue an administrative order requiring the employer to return to the employee (or pay to the U.S. Treasury if the employee cannot be located) any money paid to the employer—for the following violations:

(1) A penalty paid by the employee to the employer for ceasing employment with the employer prior to a date agreed to by the employee and employer; or

(2) A payment or compensation by the employee to the employer of the additional $500 filing fee required for the filing the petition under section 214(c)(9) of the INA.

(d) The Administrator may assess appropriate administrative remedies (including civil monetary penalties in an amount not to exceed $5,000 per violation) for the following violations:

(1) A willful failure pertaining to wages/working conditions, strike/lockout, notification, labor condition application specificity, displacement, or recruitment;

(2) A willful misrepresentation of a material fact on the labor condition application; or

(3) A discrimination, retaliation or intimidation against an employee (*see* § 655.800(d)).

(e) The Administrator may assess appropriate administrative remedies (including civil monetary penalties in an amount not to exceed $35,000 per violation) for a displacement violation which is accompanied by one of the following violations:

(1) A willful failure pertaining to wages/working condition, strike/lockout, notification, labor condition application specificity, displacement, or recruitment; or

(2) A willful misrepresentation of a material fact on the labor condition application.

(f) The Administrator shall notify the Attorney General (pursuant to § 655.855) for the implementation of the following period(s) of disqualification of the employer from approval of any petitions filed by or on behalf of the employer:

(1) Disqualification for at least one year, for violation(s) specified in paragraph (b) of this section;

(2) Disqualification for at least two years, for violation(s) specified in paragraph (d) of this section; or

(3) Disqualification for at least three years, for violation(s) specified in paragraph (e) of this section;

(g) In determining the amount of the civil money penalty to be assessed, the Administrator shall consider the type of violation committed and other relevant factors. The factors which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations, by the employer under the INA and subpart H or I of this part;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made by the violator in good faith to comply with the provisions of 8 U.S.C. 1182(n) and subparts H and I of this part;

(5) The violator's explanation of the violation or violations;

(6) The violator's commitment to future compliance; and

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss, potential injury or adverse effect with respect to other parties.

(h) Appropriate administrative remedies, which may be assessed by the Administrator under subparagraphs (b), (d) and (e) of this section, include make-whole relief for displaced U.S. workers, whistleblowers, or H–1B workers who failed to receive benefits or eligibility for benefits.

(i) The civil money penalties, back wages, and/or any other remedy(ies) determined by the Administrator to be appropriate are immediately due for payment or performance upon the assessment by the Administrator, or upon the decision by an administrative law judge where a hearing is timely requested, or upon the decision by the Secretary where review is granted. The employer shall remit the amount of the civil money penalty by certified check or money order made payable to the order of ''Wage and Hour Division, Labor.'' The remittance shall be delivered or mailed to the Wage and Hour Division office in the manner directed in the Administrator's notice of determination. The payment or performance of any other remedy prescribed by the Administrator shall follow procedures established by the Administrator. Distribution of back wages shall be administered in accordance with existing procedures established by the Administrator.

21. In § 655.815, paragraph (a) is proposed to be revised to read as follows:

§ 655.815 Written notice and service of Administrator's determination.

(a) The Administrator's determination, issued pursuant to §§ 655.805, 655.806, or 655.807 of this part, shall be served on the complainant, the employer, and other known interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail.

* * * * *

22. Section 655.855 is proposed to be revised to read as follows:

§ 655.855 Notice to the Employment and Training Administration and the Attorney General.

(a) The Administrator shall notify the Attorney General and ETA of the final determination of any violation requiring the Attorney General not to approve petitions filed by an employer. The Administrator's notification will address the type of violation committed by the employer and the appropriate statutory period for disqualification of the employer from approval of petitions. Violations requiring notification to the Attorney General are identified in § 655.810(f).

(b) The Administrator shall notify the Attorney General and ETA upon the earliest of the following events:

(1) Where the Administrator determines that there is a basis for a finding of violation by an employer, and no timely request for hearing is made pursuant to § 655.820 of this part; or

(2) Where, after a hearing, the administrative law judge issues a decision and order finding a violation by an employer, and no timely petition for review to the Secretary is made pursuant to § 655.845 of this part; or

(3) Where a petition for review is filed from an administrative law judge's decision finding a violation and the Secretary either declines within thirty days to entertain the appeal, pursuant to § 655.845(c) of this part, or the Secretary affirms the administrative law judge's determination; or

(4) Where the administrative law judge finds that there was no violation by an employer, and the Secretary, upon review, issues a decision pursuant to § 655.845 of this part, holding that a violation was committed by an employer.

(c) The Attorney General, upon receipt of notification from the Administrator pursuant to paragraph (a) of this section, shall not approve petitions filed with respect to that employer under sections 204 or 214(c) of the INA (8 U.S.C. 1154 and 1184(c)) for nonimmigrants to be employed by the employer, for the period of time required by the Act and described in § 655.810(f).

(d) ETA, upon receipt of the Administrator's notice pursuant to paragraph (a), shall invalidate the employer's labor condition application(s) under subparts H and I of this part, and shall not accept for filing any application or attestation submitted by the employer under 20 CFR part 656 or subparts A, B, C, D, E, H, or I of this part, for the same calendar period as specified by the Attorney General.

23. In § 655.840, paragraph (c) is proposed to continue to read as follows:

§ 655.840 Decision and order of administrative law judge.

* * * * *

(c) In the event that the Administrator's determination(s) of wage violation(s) and computation of back wages are based upon a wage determination obtained by the Administrator from ETA during the investigation (pursuant to § 655.731(d) of this part), and the administrative law judge determines that the Administrator's request was not warranted (under the standards in § 655.731(d) of this part), the administrative law judge shall remand the matter to the Administrator for further proceedings on the issue(s) of the existence of wage violation(s) and/or the amount(s) of back wages owed. If there is no such determination and remand by the administrative law judge, the administrative law judge shall accept such wage determination as accurate. Such wage determination is one made by ETA, from which the employer did not file a timely complaint through the Employment Service complaint system or from which the employer has appealed through the ES complaint system and a final decision therein has been issued. See § 655.731 of this part; see also 20 CFR 658.420 through 658.426. Under no circumstances shall the administrative law judge determine the validity of the wage determination or require source data obtained in confidence by ETA or the SESA, or the names of establishments contacted by ETA or the SESA, to be submitted into evidence or otherwise disclosed.

* * * * *

Signed at Washington, DC, this 23rd day of December, 1998.

Raymond J. Uhalde,

Deputy Assistant Secretary for Employment and Training, Employment and Training Administration.

John R. Fraser,

Deputy Administrator, Wage and Hour Division, Employment Standards Administration.

Appendix I (Not to be codified in the CFR): Form ETA 9035.

BILLING CODE 4510–27–p;

Labor Condition Application for H-1B Nonimmigrants

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

ETA Form 9035
OMB Approval:
Expiration Date:

It is preferred that this form be completed using the form fill program available from the U.S. Department of Labor. If you cannot use the program, please follow the guidelines below.

Circles must be filled completely.

When using a **typewriter**, use a sans serif font equivalent to 12-14 point. Center each letter in each box. DO NOT put more than one character per box. Use only CAPITAL LETTERS.

If you need to **hand write** the form, for optimum accuracy, use a medium to thick pen with black ink. Print in CAPITAL LETTERS and avoid contact with the edge of the box.
The following will serve as an example:

A	B	C	D	E	F	G	H	I	J	K	L	M
N	O	P	Q	R	S	T	U	V	W	X	Y	Z

0	1	2	3	4	5	6	7	8	9

1. Employer's Information

Full Legal Name of Employer

Federal Employer I.D. Number (9 digits) (EIN from IRS) -

Employer's Telephone Number -

Return FAX Number -

Contact Telephone Number (Optional) -

Contact's Name (Optional) (This may be an attorney or an employer's contact other than hiring official.)

Employer's Address (Number / Street)

City State Zip Code

Address Where Public Disclosure File is Kept (* ONLY If Different than Employer's Address -- If the address is the same leave this BLANK *)

City State Zip Code

NOTE: See OMB notice on page 3 of this form.

Employer's Control Number

Draft

Labor Condition Application for H-1B Nonimmigrants

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

ETA Form 9035
OMB Approval:
Expiration Date:

2. Occupational Information

Three-Digit Occupational Code | Number of H-1B Nonimmigrants

Job Title

3. Rate of Pay

$. PER — Fill Only ONE Circle: Year Month 2 Weeks Week Hour

Mark (X) if Part Time

4. Period of Intended Employment

Begin Date: M M / D D / Y Y Y Y

End Date: M M / D D / Y Y Y Y

5. Location Where H-1B Nonimmigrants Will Work and Related Information

5(a) Initial Work Location Information – REQUIRED -- Do not write 'Same as above' et al.

City | State

Prevailing Wage $. PER — Fill Only ONE Circle: Year Month 2 Weeks Week Hour

Source SESA Other

Source of Other

5(b) Additional or Subsequent Work Location Information – IF Applicable

City | State

Prevailing Wage $. PER — Fill Only ONE Circle: Year Month 2 Weeks Week Hour

Source SESA Other

Source of Other

5(c) Additional or Subsequent Work Location Information – IF Applicable

City | State

Prevailing Wage $. PER — Fill Only ONE Circle: Year Month 2 Weeks Week Hour

Source SESA Other

Source of Other

NOTE: See OMB notice on page 3 of this form.

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Labor Condition Application for H-1B Nonimmigrants

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5(d) Additional or Subsequent Work Location Information -- IF Applicable

City | State

Prevailing Wage $. PER — Fill Only ONE Circle: Year ○ Month ○ 2 Weeks ○ Week ○ Hour ○ — Source: SESA ☐ Other ☐

Source of Other

5(e) Additional or Subsequent Work Location Information -- IF Applicable

City | State

Prevailing Wage $. PER — Fill Only ONE Circle: Year ○ Month ○ 2 Weeks ○ Week ○ Hour ○ — Source: SESA ☐ Other ☐

Source of Other

6. Employer Labor Condition Statements

All applicants are required to develop and maintain documentation supporting labor condition statements 6(a), (b), and (d). Employers are also required to make available for public examination a copy of the labor condition application and necessary supporting documentation within one (1) working day after the date on which the application is filed with DOL. Mark (X) each box to indicate that the employer will comply with each statement.

☐ (a) H-1B nonimmigrants will be paid at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question *or* the prevailing wage level for the occupation in the area of employment, *whichever is higher.*

☐ (b) The employment of H-1B nonimmigrants will not adversely affect the working conditions of workers similarly employed. H-1B nonimmigrants will be offered benefits and eligibility for benefits on the same basis, and in accordance with the same criteria, as offered to similarly employed U.S. workers.

☐ (c) On the date of this application there is not a strike, lockout, or work stoppage in the course of a labor dispute in the occupation in which H-1B nonimmigrants will be employed at the place of employment. If such a strike, lockout, or work stoppage occurs after this application is submitted, I will notify ETA within 3 days of such occurrence and the application will not be used in support of a petition filing with INS for H-1B nonimmigrants to work in the same occupation at the place of employment until ETA determines the strike, lockout, or work stoppage has ceased.

☐ (d) A copy of this application has been, or will be, provided to each H-1B nonimmigrant employed pursuant to this application, and, as of this date, notice of this application has been provided to workers employed in the occupation in which H-1B nonimmigrants will be employed, either by:

- Providing notice of this filing to the bargaining representative of workers in the occupation in which H-1B nonimmigrants will be employed; OR
- There is no such bargaining representative, therefore, providing notice of this filing either through physical posting for 10 consecutive days in the locations where H-1B nonimmigrants will be employed, or through electronic notification to employees in the occupational classification for which H-1B nonimmigrants are sought.

7. Notice to Employers

☐ **Every employer who, as of the date of this application, (a) is H-1B dependent or (b) has been found to have commited a willful violation or misrepresentation during the five (5) year period preceding the date of this application, is required to check this box and complete the attestations in Item 8 on page 4 of this form. NOTE: See Item 7 of the instructions for the definition of 'H-1B dependent employer'. NOTE: If an employer is or becomes H-1B dependent, or is found to have committed a willful violation or misrepresentation, any labor condition application for H-1B nonimmigrants which was certified by the Department of Labor prior to [insert effective date of interim final rule], will be demed invalid, and may not be used in support of a petition or an extention of a petition for an H-1B nonimmigrant..**

Employer's Control Number

Draft

Labor Condition Application for H-1B Nonimmigrants

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

ETA Form 9035
OMB Approval:
Expiration Date:

Employers who, as of the date of this application, are H-1B dependent (as defined in Item 7 of the instructions) *or* who have been found to have committed a willful violation or misrepresentation during the past five (5) years (and after October 20, 1998) must complete this section:

8. Additional Employer Labor Condition Statements:

All applicants are required to develop and maintain documentation supporting labor condition statements 8(a), (b), and (c). Employers are also required to make available for public examination a copy of the labor condition application and necessary supporting documentation within one (1) working day after the date on which the application is filed with DOL. The Employer must mark (X) in any of the appropriate box(es) below:

☐ Is H-1B dependent; ***and/or***

☐ Has been found to have committed a willful violation or misrepresentation during the five (5) year period preceding the filing of this application.

and hereby agrees to observe the following labor condition statements unless the exemption requirements noted below are met:

(a) The employer will not displace any similarly employed U.S. worker within the period beginning 90 days before and ending 90 days after the date of filing a visa petition supported by this application.

(b) The employer will not place any H-1B nonimmigrant employed pursuant to this application with any other employer or at another employer's worksite *unless* the employer first makes a *bona fide* inquiry as to whether the other employer has displaced or intends to displace a similarly employed U.S. worker within the period beginning 90 days before and ending 90 days after the placement, and the employer has no contrary knowledge. NOTE: If the other employer displaces a U.S. worker during the period described, the displacement will constitute a failure to comply with the terms of the labor condition application and the employer applicant may be subject to civil money penalties and debarment.

(c) Prior to filing this application, or prior to filing any petition for an H-1B nonimmigrant pursuant to this application, the employer took or will take good faith steps meeting industry-wide standards to recuit U.S. workers for the job for which the nonimmigrant is sought, and offering compensation as least as great as offered to the H-1B nonimmigrant. The employer will (has) offer(ed) the job to any U.S. worker who (has) applies and is equaly or better qualified for the job for which the H-1B nonimmigrant is sought. NOTE: This requirement does not apply to the employment of an H-1B nonimmigrant who is a "priority worker" (persons with extraordinary ability, or outstanding professors or researchers, or certain multinational executives or managers) within the meaning of Section 203(b)(1)(A), (B), or (C) of the Immigration and Nationality Act.

☐ NOTE: An employer who uses this application *only* to support visa petitions for H-1B nonimmigrants who are exempt because they receive wages at a rate equal to at least $60,000 per year, *or* have attained a Master's degree (or its equivalent) or a higher degree in a specialty related to the employment, is not required to comply with the requirements of this Item 8 and should mark (X) this box. Employers are cautioned that if this application is used to petition for *any* non-exempt employees, they will be required to comply with these additional labor condition statements with respect to *all* of its H-1B nonimmigrants whether or not this box is marked (X) .

9. Declaration Of Employer

By signing this form, I, personally and on behalf of the employer, agree to comply with the Department of Labor regulations (see 20 CFR Part 655 Subparts H and I) governing this program and, in particular, to make this application, supporting documentation, and other records, files and documents available to officials of the Department of Labor, upon request, during any investigation under the Immigration and Nationality Act. If the employer is or becomes an H-1B dependent employer, or is found to have committed a willful violation or misrepresentation of these provisions, I personally and on behalf of the employer, further agree to comply with the attestation elements set forth in Item 8.

Name of Hiring or Other Designated Official

Title of Hiring or Other Designated Official

Signature -- DO NOT let signature extend beyond the box.

M M / D D / Y Y Y Y

NOTE: Falsification of any statements on this form may subject the employer to civil or criminal prosecution (see 18 U.S.C. 1001), as well as to civil money penalties and debarment.

Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor.

FOR U.S. GOVERNMENT AGENCY USE ONLY:

By virtue of my signature below I acknowledge that this application is hereby certified and will be valid from _____ through _____.

Signature and Title of Authorized DOL Official | ETA Case No. | Date

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of a certified labor condition application.

NOTE: See OMB notice on page 3 of this form.

Employer's Control Number

Draft

INSTRUCTIONS FOR COMPLETING FORM ETA 9035
LABOR CONDITION APPLICATION FOR H-1B NONIMMIGRANTS

IMPORTANT: READ CAREFULLY BEFORE COMPLETING THE FORM

The completed form will be electronically scanned. To ensure the accuracy of readability and avoid rejections based upon the lack thereof, it is preferred that the form be completed using the ETA 9035 form fill program available from the U.S. Department of Labor. If you hand write the form, print legibly in ink using a medium to thick pen. Print *only* in CAPITAL LETTERS and avoid contact with the edge of the boxes. See example hand writing on page 1 of the application. If you use a typewriter to complete the form use a font equivalent to 12-14 pt. Center each letter in the box and use *only* CAPITAL LETTERS. Be sure to sign and date the form. Citations below to regulations are citations to 20 CFR part 655, subparts H and I.

To knowingly furnish any false information in the preparation of the Form ETA 9035 and any supporting documentation thereto, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in a penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud or misuse of this immigration document (18 U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

Employers seeking to hire H-1B nonimmigrants in specialty occupations or as fashion models of distinguished merit and ability must submit the completed and dated original Form ETA 9035 to the designated certifying officer in the Department of Labor (Department or DOL), Employment and Training Administration (ETA) servicing office having jurisdiction over the state in which the job opportunity is located. Labor condition applications for work to be performed in ETA regions I though IV should be submitted via facsimile transmission to the ETA servicing office in Philadelphia, Pennsylvania **(FAX TO: (215) 596-____)**; and labor condition applications for work to be performed in ETA regions V through X should be submitted via facsimile transmission to the ETA servicing office in San Francisco, California **(FAX TO: (415) 975-____)**. To determine the geographical jurisdiction of these ETA regional offices, or if you wish to submit the application by mail or private carrier, see 20 CFR 655.720 for the ETA regional office addresses. An application which is complete and has no obvious inaccuracies will be certified by the Department and returned to the employer, who may then file it in support of its petition for an H-1B nonimmigrant with the Immigration and Naturalization Service (INS).

Item 1. Employer's Information. Enter the information requested under the appropriate subheading.

Full Legal Name of Employer: Enter the full legal name of the business, firm or organization, or, if an individual, enter the name used for legal purposes on documents. Some abbreviation may be required for long names.

Federal Employer I.D. Number: Enter the employer's Federal Employer Identification Number (EIN) assigned by the Internal Revenue Service. (9 digits).

Employer's Telephone No: Self-explanatory.

Return FAX No: If you want the application to be returned via facsimile transmission, enter the area code and fax number to which you want the Department to the send the final determination on the application.

Contact Telephone Number: Enter the area code and telephone number of the person to whom questions regarding the labor condition application should be directed.

Contact Name: Enter the name of the person to whom questions regarding the labor condition application should be directed.

Employer's Address: The first two lines are for the street address. The last line is for the city, state, and zip code.

Address Where Public Disclosure File is Kept: The first two lines are for the street address. The last line is for the city, state, and zip code. Enter *only* if different from the Employer's Address. Otherwise, leave blank.

Item 2. Occupational Information. Enter the information requested under the appropriate subheading.

Three-Digit Occupational Group Code: Enter the three-digit code from Appendix 1 which most clearly describes the job to be performed. (Departmental purposes only.)

Number of H-1B Nonimmigrants: Enter the number of H-1B nonimmigrants that will be hired in the three-digit occupational code stated above. Use only numerals. Do **not** spell out the number; *e.g.*, enter "001", **not** "ONE".

Job Title: Enter the common name or payroll title of the job being offered. A separate labor condition application shall be filed for each occupation in which H-1B nonimmigrants will be employed.

Item 3. Rate of Pay. Enter the salary to be paid in terms of the amount per hour, week, two weeks, month, or year. If a range of wages is to be paid to H-1B nonimmigrants under the application, enter the bottom of the wage range, which must meet the prevailing wage listed in Item 5. Mark (X) in the box to the right if the position is part-time and enter the rate of pay on an hourly basis.

Item 4. Period of Intended Employment. Enter the beginning and ending dates (month, date, and four-digit year) during which the H-1B nonimmigrants will be employed. Fill all boxes; *e.g.*, July 5, 2000, should be written as "07/05/2000".

Item 5. Location Where H-1B Nonimmigrants Will Work and Related Information. Enter the information requested under the appropriate subheading.

5(a). Initial Work Location Information: Enter the city and state of the site where the work will actually be performed.

Prevailing Wage Rate and its Source: Enter the prevailing wage rate in terms of the amount per hour, week, two weeks, month, or year. If the position is part-time, enter the prevailing wage on an hourly basis. If the employer is relying on a wage determination obtained from a State Employment Security Agency, mark (X) the "SESA" box. If the employer is using another source, mark (X) the "Other" box and specify such other source in the space provided, *i.e.*, the year published and the name of the published wage survey, or other source utilized by the employer to determine the prevailing wage for the occupational classification in which H-1B nonimmigrants will be employed; *e.g.*, "1998 collective bargaining agreement", "1998 BLS Survey", "1998 employer-conducted survey", *etc.*

5(b)-(e). Additional or Subsequent Work Location Information: If H-1B nonimmigrants are to be employed concurrently or sequentially in more than one location, enter the city and state of the other sites or locations where the work will actually be performed in Items 5(b) through (e), as needed. Enter the prevailing wage rate and its source for each additional work location in the manner described in Item 5(a).

Item 6. Employer Labor Condition Statements. The employer must attest to the conditions listed in Items 6(a) through (d) by marking (X) in each box and by signing the application form. Employers must develop and maintain documentation to support labor condition statements 6(a), (b), and (d). Documentation in support of a labor condition application shall be retained at the employer's principal place of business or the worksite and made available to DOL officials upon request. See §§655.731 through 655.734 for guidance on the documentation that must support each labor condition statement.

6(a). Wages: The employer must attest that H-1B nonimmigrants will be paid wages which are at least the higher of the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the

prevailing wage level for the occupational classification in the area of intended employment. See §655.731.

6(b). Working Conditions: The employer must attest that the employment of H-1B nonimmigrants in the named occupation will not adversely affect the working conditions of workers similarly employed. The employer must further attest that H-1B nonimmigrants will be offered benefits and eligibility for benefits on the same basis, and in accordance with the same criteria, as offered to similarly employed U.S. workers. See §655.732.

6(c). Strike, Lockout, or Work Stoppage: The employer must attest that on the date the application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the named occupation at the worksite(s) and that, if a such a strike, lockout, or work stoppage occurs after the application is submitted, the employer will notify ETA within 3 days of such occurrence and the application will not be used in support of a petition filing with INS for H-1B nonimmigrants to work in the same occupation at the place of employment until ETA determines the strike, lockout, or work stoppage has ceased. See §655.733.

6(d). Notice: The employer must attest that as of the date of filing, notice of the labor condition application has been or will be provided to workers employed in the named occupation. Notice of the application may be provided to workers through the bargaining representative, or where there is no such bargaining representative, notice of the filing must be provided either through physical posting in conspicuous locations where H-1B nonimmigrants will be employed, or through electronic notification to employees in the occupational classification for which H-1B nonimmigrants are sought. Further, the employer must attest that each H-1B nonimmigrant employed pursuant to the application will be provided with a copy of the application. This notification shall be provided no later than the date the H-1B nonimmigrant reports to work at the place of employment. See §655.734.

Item 7. Notice to Employers. An employer who is either H-1B dependent or has been found to have committed a willful violation or misrepresentation during the five year period preceding the date of the application must mark (X) the box and attest to the additional labor condition statements in Item 8 on page four of the application. The determination as to whether an employer is H-1B dependent is a function of the number of H-1B nonimmigrants employed as a proportion of the total number of full-time equivalent employees employed in the U.S. The following table can be used to determine whether the employer is or is not H-1B dependent.

An employer is H-1B dependent if it employs in the U.S.:		
Number of full-time equivalent employees:		Number of H-1B nonimmigrant employees:
1 to 25	*inc'l*	8 or more
26 to 50	*inc'l*	13 or more
51 or more	*inc'l*	15% or more of its U.S. workforce

See §655.7__ for more detailed guidance as to what constitutes an "H-1B dependent employer". No employer who is or becomes an H-1B dependent employer, or is found to have committed a willful violation or misrepresentation, may continue to use *any* labor condition application for H-1B nonimmigrants which was certified by the Department of Labor before **[insert effective date of interim final rule]**, in support of a petition or extension of a petition for an H-1B nonimmigrant which is filed on or after that date.

Item 8. Additional Employer Labor Condition Statements. Every employer who, as of the date of the application, is H-1B dependent (as defined in Item 7) or who has been found to have committed a willful violation or misrepresentation during the five year period preceding the date of the application, must attest to the additional labor condition statements by completing Item 8 and by signing the application form. Such employers are required to develop and maintain documentation supporting these additional labor condition statements and are further required to make such documentation available for public examination in the same manner as the documentation required to be made publicly available under Item 6 of the application. An employer subject to Item 8 must mark (X) the appropriate box(es).

8(a). Displacement: The employer must attest that it will not displace any similarly employed U.S. worker within the period beginning 90 days before and ending 90 days after the date of filing a visa petition for an H-1B nonimmigrant supported by the application. See §655.7__.

8(b). Secondary Displacement: The employer must attest that it will not place any H-1B nonimmigrant employed pursuant to the application with any other employer or at another employer's worksite where there are indicia of employment between the nonimmigrant and such other employer, *unless* the employer applicant first makes a *bona fide* inquiry as to whether the other employer has displaced or intends to displace a similarly employed U.S. worker within the period beginning 90 days before and ending 90 days after the placement, and the employer applicant has no contrary knowledge. If the other employer displaces a similarly employed U.S. worker during such period, the displacement will constitute a failure by the employer applicant to comply with the terms of the labor condition application and the employer applicant may be subject to civil money penalties and debarment. See §655.7__.

8(c). Recruitment: The employer must attest that prior to filing the application, or prior to filing any petition for an H-1B nonimmigrant pursuant to the application, it took or will take good faith steps meeting industry-wide standards to recruit U.S. workers for the job for which the H-1B nonimmigrant is sought and offered, or will offer, compensation at least as great as offered to the H-1B nonimmigrant. The employer must further attest that it has offered, or will offer, the job to any U.S. worker who applies and was or is equally or better qualified for the job for which the H-1B nonimmigrant is sought. This recruitment labor condition statement does not apply to the employment of an H-1B nonimmigrant who is a "priority worker" (a person with extraordinary ability, an outstanding professor or researcher, or a certain multinational executive or manager) within the meaning of Section 203(b)(1)(A), (B), or (C) of the Immigration and Nationality Act. See §655.7__.

Note: An employer who uses the application *only* to support visa petitions for H-1B nonimmigrants who are exempt because they receive wages at a rate equal to at least $60,000 per year, or have attained a Master's degree (or its equivalent) or a higher degree in a specialty related to the employment, is not required to comply with requirements of Item 8 and should mark (X) this box to so indicate. The employer is cautioned that if the application is used to petition for *any* non-exempt H-1B nonimmigrants, it will be required to comply with these additional labor condition statements with respect to *all* of its H-1B nonimmigrants, if these statements are applicable under item 8.

Item 9. Declaration of Employer. By signing the form, the employer is attesting to the accuracy of the labor condition statements and to its obligation to comply with these conditions. False statements are subject to Federal criminal penalties, as stated above. Failure to meet a condition of the application, or misrepresentation of a material fact may result in additional penalties.

THREE-DIGIT OCCUPATIONAL GROUPS

PROFESSIONAL, TECHNICAL, AND MANAGERIAL OCCUPATIONS AND FASHION MODELS

OCCUPATIONS IN ARCHITECTURE, ENGINEERING, AND SURVEYING

001 ARCHITECTURAL OCCUPATIONS
002 AERONAUTICAL ENGINEERING OCCUPATIONS
003 ELECTRICAL/ELECTRONICS ENGINEERING OCCUPATIONS
005 CIVIL ENGINEERING OCCUPATIONS
006 CERAMIC ENGINEERING OCCUPATIONS
007 MECHANICAL ENGINEERING OCCUPATIONS
008 CHEMICAL ENGINEERING OCCUPATIONS
010 MINING AND PETROLEUM ENGINEERING OCCUPATIONS
011 METALLURGY AND METALLURGICAL ENGINEERING OCCUPATIONS
012 INDUSTRIAL ENGINEERING OCCUPATIONS
013 AGRICULTURAL ENGINEERING OCCUPATIONS
014 MARINE ENGINEERING OCCUPATIONS
015 NUCLEAR ENGINEERING OCCUPATIONS
017 DRAFTERS
018 SURVEYING/CARTOGRAPHIC OCCUPATIONS
019 OTHER OCCUPATIONS IN ARCHITECTURE, ENGINEERING, AND SURVEYING

OCCUPATIONS IN MATHEMATICS AND PHYSICAL SCIENCES

020 OCCUPATIONS IN MATHEMATICS
021 OCCUPATIONS IN ASTRONOMY
022 OCCUPATIONS IN CHEMISTRY
023 OCCUPATIONS IN PHYSICS
024 OCCUPATIONS IN GEOLOGY
025 OCCUPATIONS IN METEOROLOGY
029 OTHER OCCUPATIONS IN MATHEMATICS AND PHYSICAL SCIENCES

COMPUTER-RELATED OCCUPATIONS

030 OCCUPATIONS IN SYSTEMS ANALYSIS AND PROGRAMMING
031 OCCUPATIONS IN DATA COMMUNICATIONS AND NETWORKS
032 OCCUPATIONS IN COMPUTER SYSTEM USER SUPPORT
033 OCCUPATIONS IN COMPUTER SYSTEM TECHNICAL SUPPORT
039 OTHER COMPUTER-RELATED OCCUPATIONS

OCCUPATIONS IN LIFE SCIENCES

040 OCCUPATIONS IN AGRICULTURAL SCIENCES
041 OCCUPATIONS IN BIOLOGICAL SCIENCES
045 OCCUPATIONS IN PSYCHOLOGY
049 OTHER OCCUPATIONS IN LIFE SCIENCES

OCCUPATIONS IN SOCIAL SCIENCES

050 OCCUPATIONS IN ECONOMICS
051 OCCUPATIONS IN POLITICAL SCIENCE
052 OCCUPATIONS IN HISTORY
054 OCCUPATIONS IN SOCIOLOGY
055 OCCUPATIONS IN ANTHROPOLOGY
059 OTHER OCCUPATIONS IN SOCIAL SCIENCES

OCCUPATIONS IN MEDICINE AND HEALTH

070 PHYSICIANS AND SURGEONS
071 OSTEOPATHS
072 DENTISTS
073 VETERINARIANS
074 PHARMACISTS
076 THERAPISTS
077 DIETICIANS
078 OCCUPATIONS IN MEDICAL AND DENTAL TECHNOLOGY
079 OTHER OCCUPATIONS IN MEDICINE AND HEALTH

OCCUPATIONS IN EDUCATION

090 OCCUPATIONS IN COLLEGE AND UNIVERSITY EDUCATION
091 OCCUPATIONS IN SECONDARY SCHOOL EDUCATION
092 OCCUPATIONS IN PRESCHOOL, PRIMARY SCHOOL, AND KINDERGARTEN EDUCATION
094 OCCUPATIONS IN EDUCATION OF PERSONS WITH DISABILITIES
096 HOME ECONOMISTS AND FARM ADVISERS
097 OCCUPATIONS IN VOCATIONAL EDUCATION
099 OTHER OCCUPATIONS IN EDUCATION

OCCUPATIONS IN MUSEUM, LIBRARY, AND ARCHIVAL SCIENCES

100 LIBRARIANS
101 ARCHIVISTS
102 MUSEUM CURATORS AND RELATED OCCUPATIONS
109 OTHER OCCUPATIONS IN MUSEUM, LIBRARY, AND ARCHIVAL SCIENCES

OCCUPATIONS IN LAW AND JURISPRUDENCE

110 LAWYERS
111 JUDGES
119 OTHER OCCUPATIONS IN LAW AND JURISPRUDENCE

OCCUPATIONS IN RELIGION AND THEOLOGY

120 CLERGY
129 OTHER OCCUPATIONS IN RELIGION AND THEOLOGY

OCCUPATIONS IN WRITING

131 WRITERS
132 EDITORS: PUBLICATION, BROADCAST, AND SCRIPT
139 OTHER OCCUPATIONS IN WRITING

OCCUPATIONS IN ART

141 COMMERCIAL ARTISTS: DESIGNERS AND ILLUSTRATORS, GRAPHIC ARTS
142 ENVIRONMENTAL, PRODUCT, AND RELATED DESIGNERS
149 OTHER OCCUPATIONS IN ART

OCCUPATIONS IN ENTERTAINMENT AND RECREATION

152 OCCUPATIONS IN MUSIC
159 OTHER OCCUPATIONS IN ENTERTAINMENT AND RECREATION

[FR Doc. 98–34668 Filed 12–31–98; 8:45 am]
BILLING CODE 4510–27–P; 4510–30–C

Federal Register

Tuesday
January 5, 1999

Part V

Department of Agriculture

Cooperative State Research, Education, and Extension Service

1890 Institution Teaching and Research Capacity Building Grants Program for Fiscal Year 1999; Request for Proposals; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service 1890 Institution Teaching and Research Capacity Building Grants Program for Fiscal Year 1999; Request for Proposals

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of request for proposals.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is announcing the 1890 Institution Teaching and Research Capacity Building Grants Program for Fiscal Year (FY) 1999. Proposals are hereby requested from eligible institutions as identified herein for competitive consideration of capacity building grant awards.

DATES: Proposals must be received by close of business on March 16, 1999. Proposals received after the closing date will not be considered for funding.

FOR FURTHER INFORMATION CONTACT: Richard M. Hood, Higher Education Programs; Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2251, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2251; Telephone: (202) 720–2186; E-mail: rhood@reeusda.gov. Dr. McKinley Mayes, 1890 College Program Coordinator, CSREES, USDA is also available to assist you. He can be reached at (202) 720–3511; or via the Internet: mmayes@reeusda.gov.

Stakeholder Input: CSREES is soliciting comments regarding this solicitation of applications from any interested party. These comments will be considered in the development of the next request for proposals for the program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998, Pub. L. 105–185 (AREERA). Written comments should be submitted by first-class mail to: Office of Extramural Programs; Competitive Research Grants and Awards Management; USDA-CSREES; STOP 2299; 1400 Independence Avenue, S.W., Washington, D.C. 20250–2299, or via e-mail to: RFP-OEP@reeusda.gov.

In your comments, please include the name of the program and the fiscal year solicitation of applications to which you are responding. Comments are requested within six months from the issuance of the solicitation of applications. Comments received after that date will be considered to the extent practicable.

SUPPLEMENTARY INFORMATION:

Table of Contents

A. Administrative Provisions

This program is subject to the provisions found at 7 CFR part 3406, 62 FR 39330, July 22, 1997, as provided herein. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects.

B. Authority

The authority for this program is contained in section 1417(b)(4) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA)(7 U.S.C. 3152(b)(4)). In accordance with this statutory authority, the U.S. Department of Agriculture (USDA) through the Higher Education Programs (HEP) of CSREES will award competitive grants of 18 to 36 months duration, subject to the availability of funds. These grants will be made to the historically black 1890 Land-Grant Institutions and Tuskegee University to strengthen their programs in the food and agricultural sciences in the targeted need areas as described herein.

C. Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.216, 1890 Institution Capacity Building Grants Program.

D. Institutional Eligibility

Proposals may be submitted by any of the sixteen historically black 1890 Land-Grant Institutions and Tuskegee University. The 1890 Land-Grant Institutions are: Alabama A&M University; University of Arkansas-Pine Bluff; Delaware State University; Florida A&M University; Fort Valley State University; Kentucky State University; Southern University and A&M College; University of Maryland-Eastern Shore; Alcorn State University; Lincoln University (MO); North Carolina A&T State University; Langston University; South Carolina State University; Tennessee State University; Prairie View A&M University; and Virginia State University. An institution eligible to receive an award under this program includes a research foundation maintained by an 1890 land-grant institution or Tuskegee University.

E. Purpose of the Program

The purpose of this grant program is to build the institutional capacities of the eligible colleges and universities through cooperative initiatives with Federal and non-Federal entities. This program addresses the need to (1) attract more students from under represented groups into the food and agricultural sciences, (2) expand the linkages among the 1890 Institutions and with other colleges and universities, and (3) strengthen the teaching and research capacity of the 1890 Institutions to more firmly establish them as full partners in the food and agricultural science and education system. In addition, through this program, USDA will strive to increase the overall pool of qualified applicants for the Department to make significant progress toward achievement of the Department's goal of increasing participation of under represented groups in Departmental programs.

F. Available Funds and Award Limitations

For FY 1999, $9.2 million has been appropriated for this program. CSREES anticipates that approximately $8.6 million will be available for project grants for this program in FY 1999. Of this amount, approximately $4.35 million will be used to support teaching projects, and $4.25 million will be used to support research projects. Awards will be based upon scientific and merit review and the recommendations of peer review panels; however, up to ten percent of the funds allocated for teaching and up to ten percent of the funds allocated for research may be used to support projects in either area based upon administrative decision by CSREES.

G. Limitation on Indirect Costs

For teaching project grants—CSREES is prohibited from paying indirect costs exceeding 19 per centum of the total Federal funds provided under each award, (7 U.S.C. 3310)

For research project grants—CSREES is prohibited from paying indirect costs exceeding 14 per centum of the total Federal funds provided under each award. (Section 711 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 1999, enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277.)

H. Program Areas

In FY 1999, the Capacity Building Grants Program will support both teaching and research projects.

I. Targeted Areas

The targeted need areas to be supported by capacity building grants in FY 1999 are:

For teaching project grants—curricula design and materials development, faculty preparation and enhancement for teaching, instruction delivery systems, scientific instrumentation for teaching, student experiential learning, and student recruitment and retention.

For research project grants—studies and experimentation in food and agricultural sciences, centralized research support systems, technology delivery systems, and other creative projects designed to provide needed enhancement of the nation's food and agricultural research system.

In FY 1999, eligible institutions may propose projects in any discipline(s) of the food and agricultural sciences as defined in section 1404(8) of NARETPA as amended by section 221(a) of AREERA (7 U.S.C. 3103(8)). There are no limits on the specific subject matter/emphasis areas to be supported.

J. Degree Levels Supported

In FY 1999, proposals may be directed to the undergraduate or graduate level of study leading to a baccalaureate or higher degree in the food and agricultural sciences.

K. Proposal Submission Limitations

In FY 1999, there is no limit on the number of proposals an eligible institution may submit. However, there are funding limitations in FY 1999 that will affect the number of awards eligible institutions and individuals may receive. Therefore, institutions are encouraged to establish on-campus quality control panels to ensure that only high quality proposals having the greatest potential for improving academic and research programs are submitted for consideration. Eligible institutions may submit grant applications for either category of grants (teaching or research); however, each application must be limited to either a teaching project grant proposal or a research project grant proposal.

L. Maximum Grant Size

In FY 1999, the following limitations apply: A teaching proposal may request a grant for up to $200,000. A research proposal may request a grant for up to $300,000. Note: These maximums are for the total duration of the project, not per year.

M. Project Duration

A regular, complementary, or joint project proposal may request funding for a period of 18 to 36 months duration.

N. Funding Limitations per Institution

In FY 1999, the following two limitations will apply to the institutional maximum: (1) no institution may receive more than four grants, and (2) no institution may receive more than 10 percent of the total funds available for grant awards (approximately $860,000).

For a Joint Project Proposal (submitted by an eligible institution and involving two or more other colleges or universities assuming major roles in the conduct of the project), only that portion of the award to be retained by the grantee will be counted against the grantee's institutional maximum. Those funds to be transferred to the other colleges and universities participating in the joint project will not be applied toward the maximum funds allowed the grantee institution. However, if any of the other colleges and universities participating in the joint project are 1890 Institutions or Tuskegee University, the amount transferred from the grantee institution to such institutions will be counted toward their institutional maximums. For Complementary Project Proposals, only those funds to be retained by the grantee institution will be counted against the grantee's institutional maximum.

O. Funding Limitation per Individual

In FY 1999, the maximum number of new awards that an individual (Project Director or Principal Investigator) may receive is two grants. This restriction does not apply to joint projects.

P. Funding Limitation per Targeted Need Area

In FY 1999, the maximum number of new awards that an individual may receive in a given fiscal year, in any one targeted need area, that focuses on a single subject matter area or discipline, is one grant. This restriction does not apply to proposals that address multiple targeted need areas and/or multiple subject matter areas.

Q. Matching Funds

The Department strongly encourages non-Federal matching support for the program. For FY 1999, the following incentive is offered to applicants for committing their own institutional resources or securing third-party contributions in support of capacity building projects:

Tie Breaker—The amount of institutional and third-party cash and non-cash matching support for each proposed project, will be used as the primary criterion to break any ties (cases where proposals are equally rated in merit) resulting from the proposal review process conducted by the peer review panels. A grant awarded on this basis will contain language requiring such matching commitments as a condition of the grant.

Please Note: Proposals must include written verification from the donor(s) of any actual commitments of matching support (including both cash and non-cash contributions) derived from the university community, business and industry, professional societies, the States, or other non-Federal sources.

The cash contributions towards matching from the institution should be identified in the column ''Applicant Contributions to Matching Funds'' of the Higher Education Budget, Form CSREES–713. The cash contributions of the institution and third parties as well as non-cash contributions should be identified on Line N., as appropriate, of Form CSREES–713.

R. Evaluation Criteria

Section 223(2) of the Agricultural Research, Extension, and Education Reform Act of 1998, Pub. L. No. 105–185 (AREERA), amended section 1417 of NARETPA to require that certain priorities be given in awarding grants for teaching enhancement projects under section 1417(b) of NARETPA. Since this program is authorized under section 1417(b), CSREES considers all applications received in response to this solicitation as teaching enhancement project applications. To implement the AREERA priorities for proposals submitted for the fiscal year (FY) 1999 competition, the evaluation criteria used to evaluate proposals, as provided in the Administrative Provisions for this program (7 CFR 3406.15), have been modified to include new criteria or extra points for proposals demonstrating enhanced coordination among eligible institutions and focusing on innovative, multidisciplinary education programs, material, or curricula. The following evaluation criteria and weights will be used to evaluate proposals submitted for funding to the FY 1999 competition:

	Weight
Evaluation Criteria for Teaching Proposals	
(a) Potential for advancing the quality of education: This criterion is used to assess the likelihood that the project will have a substantial impact upon and advance the quality of food and agricultural sciences higher education by strengthening institutional capacities through promoting education reform to meet clearly delineated needs.	
(1) Impact—Does the project address a targeted need area(s)? Is the problem or opportunity clearly documented? Does the project address a significant State, regional, multistate, national, or international problem or opportunity? Will the benefits to be derived from the project transcend the applicant institution and/or the grant period? Is it probable that other institutions will adapt this project for their own use? Can the project serve as a model for others?	15 points.
(2) Innovative and multidisciplinary focus—Does the project focus on innovative, multidisciplinary education programs, material, or curricula? Is the project based on a non-traditional approach toward solving a higher education problem in the food and agricultural sciences? Is the project relevant to multiple fields in the food and agricultural sciences? Will the project expand partnership ventures among disciplines at a university?	15 points
(3) Products and results—Are the expected products and results of the project clearly defined and likely to be of high quality? Will project results be of an unusual or unique nature? Will the project contribute to a better understanding of or an improvement in the quality or diversity of the Nation's food and agricultural scientific and professional expertise base?	10 points
(4) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support with the use of institutional funds? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting?	10 points
(b) Overall approach and cooperative linkages: This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project.	
(1) Proposed approach—Do the objectives and plan of operation appear to be sound and appropriate relative to the targeted need area(s) and the impact anticipated? Are the procedures managerially, educationally, and scientifically sound? Is the overall plan integrated with or does it expand upon other major efforts to improve the quality of food and agricultural sciences higher education? Does the timetable appear to be readily achievable?	15 points
(2) Evaluation—Are the evaluation plans adequate and reasonable? Do they allow for continuous or frequent feedback during the life of the project? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can they provide an objective evaluation? Do evaluation plans facilitate the measurement of project progress and outcomes?	5 points
(3) Dissemination—Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications, presentations at professional conferences, or use by faculty development or research/teaching skills workshops?	5 points
(4) Collaborative efforts—Does the project have significant potential for advancing cooperative ventures between the applicant institution and a USDA agency? Does the project workplan include an effective role for the cooperating USDA agency(s)?	10 points
(5) Coordination and partnerships—Does the project demonstrate enhanced coordination between the applicant institution and other colleges and universities with food and agricultural science programs eligible to receive grants under this program? Will the project lead to long-term relationships or cooperative partnerships, including those with the private sector, that are likely to enhance program quality or supplement resources available to food and agricultural sciences higher education?	5 points
(c) Institutional capacity building: This criterion relates to the degree to which the project will strengthen the teaching capacity of the applicant institution. In the case of a joint project proposal, it relates to the degree to which the project will strengthen the teaching capacity of the applicant institution and that of any other institution assuming a major role in the conduct of the project.	
(1) Institutional enhancement—Will the project help the institution to: expand the current faculty's expertise base; attract, hire, and retain outstanding teaching faculty; advance and strengthen the scholarly quality of the institution's academic programs; enrich the racial, ethnic, or gender diversity of the faculty and student body; recruit students with higher grade point averages, higher standardized test scores, and those who are more committed to graduation; become a center of excellence in a particular field of education and bring it greater academic recognition; attract outside resources for academic programs; maintain or acquire state-of-the-art scientific instrumentation or library collections for teaching; or provide more meaningful student experiential learning opportunities?	15 points

	Weight
(2) Institutional commitment—Is there evidence to substantiate that the institution attributes a high-priority to the project, that the project is linked to the achievement of the institution's long-term goals, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans? Will the project have reasonable access to needed resources such as instructional instrumentation, facilities, computer services, library and other instruction support resources?	15 points
(d) Personnel Resources: This criterion relates to the number and qualifications of the key persons who will carry out the project. Are designated project personnel qualified to carry out a successful project? Are there sufficient numbers of personnel associated with the project to achieve the stated objectives and the anticipated outcomes?	10 points
(e) Budget and cost-effectiveness: This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective.	
(1) Budget—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget explained clearly and in sufficient detail?	10 points
(2) Cost-effectiveness—Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize educational value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a targeted need area, or promote coalition building for current or future ventures?	5 points
(f) Overall quality of proposal: This criterion relates to the degree to which the proposal complies with the application guidelines and is of high quality. Is the proposal enhanced by its adherence to instructions (table of contents, organization, pagination, margin and font size, the 20-page limitation, appendices, etc.); accuracy of forms; clarity of budget narrative; well prepared vitae for all key personnel associated with the project; and presentation (are ideas effectively presented, clearly articulated, and thoroughly explained, etc.)?	5 points
Evaluation Criteria for Research Proposals	
(a) Significance of the problem: This criterion is used to assess the likelihood that the project will advance or have a substantial impact upon the body of knowledge constituting the natural and social sciences undergirding the agricultural, natural resources, and food systems.	
(1) Impact—Is the problem or opportunity to be addressed by the proposed project clearly identified, outlined, and delineated? Are research questions or hypotheses precisely stated? Is the project likely to further advance food and agricultural research and knowledge? Does the project have potential for augmenting the food and agricultural scientific knowledge base? Does the project address a significant State, regional, multistate, national, or international problem(s)? Will the benefits to be derived from the project transcend the applicant institution and/or the grant period?	15 points
(2) Innovative and multidisciplinary focus—Is the project based on a non-traditional approach? Does the project reflect creative thinking? To what degree does the venture reflect a unique approach that is new to the applicant institution or new to the entire field of study? Does the project focus on innovative, multidisciplinary education programs, material, or curricula? Is the project relevant to multiple fields in the food and agricultural sciences? Will the project expand partnership ventures among disciples at a university?	15 points
(3) Products and results—Are the expected products and results of the project clearly outlined and likely to be of high quality? Will project results be of an unusual or unique nature? Will the project contribute to a better understanding of or an improvement in the quality or diversity of the Nation's food and agricultural scientific and professional expertise base?	10 points
(4) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support? Are there plans for continuing this line of research or research support activity with the use of institutional funds after the end of the grant? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting? What is the potential for royalty or patent income, technology transfer or university-business enterprises? What are the probabilities of the proposed activity or line of inquiry being pursued by researchers at other institutions?	10 points
(b) Overall approach and cooperative linkages: This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project.	
(1) Proposed approach—Do the objectives and plan of operation appear to be sound and appropriate relative to the proposed initiative(s) and the impact anticipated? Is the proposed sequence of work appropriate? Does the proposed approach reflect sound knowledge of current theory and practice and awareness of previous or ongoing related research? If the proposed project is a continuation of a current line of study or currently funded project, does the proposal include sufficient preliminary data from the previous research or research support activity? Does the proposed project flow logically from the findings of the previous stage of study? Are the procedures scientifically and managerially sound? Are potential pitfalls and limitations clearly identified? Are contingency plans delineated? Does the timetable appear to be readily achievable?	15 points
(2) Evaluation—Are the evaluation plans adequate and reasonable? Do they allow for continuous or frequent feedback during the life of the project? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can they provide an objective evaluation? Do evaluation plans facilitate the measurement of project progress and outcomes?	5 points
(3) Dissemination—Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications and presentations at professional society meetings?	5 points
(4) Collaborative efforts—Does the project have significant potential for advancing cooperative ventures between the applicant institution and a USDA agency? Does the project workplan include an effective role for the cooperating USDA agency(s)?	10 points

	Weight
(5) Coordination and partnerships—Does the project demonstrate enhanced coordination between the applicant institution and other colleges and universities with food and agricultural science programs eligible to receive grants under this program? Will the project lead to long-term relationships or cooperative partnerships, including those with the private sector, that are likely to enhance research quality or supplement available resources?	5 points
(c) Institutional capacity building: This criterion relates to the degree to which the project will strengthen the research capacity of the applicant institution. In the case of a joint project proposal, it relates to the degree to which the project will strengthen the research capacity of the applicant institution and that of any other institution assuming a major role in the conduct of the project.	
(1) Institutional enhancement—Will the project help the institution to advance the expertise of current faculty in the natural or social sciences; provide a better research environment, state-of-the-art equipment, or supplies; enhance library collections related to the area of research; or enable the institution to provide efficacious organizational structures and reward systems to attract, hire and retain first-rate research faculty and students—particularly those from under-represented groups?	15 points
(2) Institutional commitment—Is there evidence to substantiate that the institution attributes a high-priority to the project, that the project is linked to the achievement of the institution's long-term goals, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans? Will the project have reasonable access to needed resources such as scientific instrumentation, facilities, computer services, library and other research support resources?	15 points
(d) Personnel Resources: This criterion relates to the number and qualifications of the key persons who will carry out the project. Are designated project personnel qualified to carry out a successful project? Are there sufficient numbers of personnel associated with the project to achieve the stated objectives and the anticipated outcomes? Will the project help develop the expertise of young scientists at the doctoral or post-doctorate level?	10 Points
(e) Budget and cost-effectiveness: This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective.	
(1) Budget—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget explained clearly and in sufficient detail?	10 points
(2) Cost-effectiveness—Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize research value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a high-priority research initiative(s), or promote coalition building for current or future ventures?	5 points
(f) Overall quality of proposal: This criterion relates to the degree to which the proposal complies with the application guidelines and is of high quality. Is the proposal enhanced by its adherence to instructions (table of contents, organization, pagination, margin and font size, the 20-page limitation, appendices, etc.); accuracy of forms; clarity of budget narrative; well prepared vitae for all key personnel associated with the project; and presentation (are ideas effectively presented, clearly articulated, thoroughly explained, etc.)?	5 points

S. How To Obtain Application Materials

Copies of this solicitation and an Application Kit containing program application materials will be made available to eligible institutions upon request. These materials include the Administrative Provisions, forms, instructions, and other relevant information needed to prepare and submit grant applications. Copies of the Application Kit may be requested from the Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245. The telephone number is (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting forms for the FY 1999 1890 Institution Capacity Building Grants Program.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the FY 1999 1890 Institution Capacity Building Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

T. What To Submit

An original and seven (7) copies of a proposal must be submitted. Proposals should contain all requested information when submitted. Each proposal should be typed on 8 1/2″ × 11″ white paper, single-spaced, and on one side of the page only. Please note that the text of the proposal should be prepared using no type smaller than 12 point font size and one-inch margins. All copies of the proposal must be submitted in one package. Each copy of the proposal must be stapled securely in the upper left-hand corner (DO NOT BIND).

U. Where and When To Submit

Hand-delivered proposals (brought in person by the applicant or through a courier service) must be received on or before March 16, 1999, at the following address: 1890 Institution Capacity Building Grants Program; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024. Proposals transmitted via a facsimile (fax) machine will not be accepted.

Proposals submitted through the U.S. mail must be received on or before March 16, 1999. Proposals submitted through the U.S. mail should be sent to the following address: 1890 Institution Capacity Building Grants Program; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245. The telephone number is (202) 401–5048.

For FY 1999, Form CSREES–711, ''Intent to Submit a Proposal,'' is not requested nor required for the 1890 Institution Capacity Building Grants Program.

V. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing and this acknowledgment will contain a proposal identification number. Once your proposal has been assigned a proposal number, please cite that number in future correspondence.

Done at Washington, D.C., this 29th day of December 1998.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 99–78 Filed 1–4–99; 8:45 am]

BILLING CODE 3410–22–P

Federal Register

Tuesday
January 5, 1999

Part VI

Environmental Protection Agency

40 CFR Part 372

Persistent Bioaccumulative Toxic (PBT) Chemicals; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400132; FRL–6032–3]

RIN 2070–AD09

Persistent Bioaccumulative Toxic (PBT) Chemicals; Lowering of Reporting Thresholds for Certain PBT Chemicals; Addition of Certain PBT Chemicals; Amendments to Proposed Addition of a Dioxin and Dioxin-Like Compounds Category; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to lower the reporting thresholds for certain persistent bioaccumulative toxic chemicals that are subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). EPA is also proposing lower reporting thresholds for dioxin and dioxin-like compounds, which were previously proposed for addition to the EPCRA section 313 list of toxic chemicals. EPA is proposing these actions pursuant to its authority under EPCRA section 313(f)(2) to revise reporting thresholds. In addition, EPA is proposing to add certain persistent and bioaccumulative toxic chemicals to the list of chemicals subject to the reporting under EPCRA section 313 and PPA section 6607 and to establish lower reporting thresholds for these chemicals. EPA is proposing to add these chemicals to the EPCRA section 313 list pursuant to its authority to add chemicals and chemical categories that meet the EPCRA section 313(d)(2) toxicity criteria. The proposed additions of these chemicals are based on their carcinogenicity or other chronic human health effects and/or their adverse effects on the environment. As part of today's actions, EPA is amending its proposal published in the **Federal Register** of May 7, 1997, to add a category of dioxin and dioxin-like compounds to the EPCRA section 313 list of toxic chemicals by proposing to exclude the co-planar polychlorinated biphenyls (PCBs) from the category and by proposing to add an activity qualifier to the category. EPA is also proposing to require that separate reports be filed for tetraethyl lead and tetramethyl lead which are listed under the lead compounds category. Today's actions also include proposed modifications to certain reporting exemptions and requirements for those toxic chemicals that would be subject to the lower reporting thresholds.

DATES: Written comments, identified by the docket control number OPPTS–400132, must be received by EPA on or before March 8, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the SUPPLEMENTARY INFORMATION section of this proposal.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Petitions Coordinator, 202–260–3882, e-mail: bushman.daniel@epamail.epa.gov, for specific information on this proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply To Me?

You may be potentially affected by this action if you manufacture, process, or otherwise use any of the chemicals listed under Table 1 in Unit V.C.1. of this preamble. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Industry	Facilities that: incinerate or otherwise treat, store or dispose of hazardous waste or sewage sludge; operate chlor-alkali processes; manufacture chlorinated organic compounds, pesticides, other organic or inorganic chemicals, tires, inner tubes, other rubber products, plastics and material resins, paints, Portland cement, pulp and paper, asphalt coatings, or electrical components; operate cement kilns; operate metallurgical processes such as steel production, smelting, metal recovery furnaces, blast furnaces, coke ovens, metal casting and stamping; operate petroleum bulk terminals; operate petroleum refineries; operate industrial boilers that burn coal, wood, petroleum products; and electric utilities that combust coal and/or oil for distribution of electricity in commerce
Federal Government	Federal facilities that: burn coal, wood, petroleum products; burn wastes; incinerate or otherwise treat, store or dispose of hazardous waste or sewage sludge.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information or Copies of this Document or Other Support Documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents from the EPA internet Home Page at http://www.epa.gov/. On the Home Page select

''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register** - Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

2. *In person or by phone.* If you have any questions or need additional information about this action, please contact the technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' section. In addition, the official record for this notice, including the public version, has been established under docket control number OPPTS–400132, (including the references in Unit XI. of this preamble and comments and data submitted electronically as described below). This record includes not only the documents physically contained in the docket, but all of the documents included as references in those documents. A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460. The TSCA Nonconfidential Information Center telephone number is 202–260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket number (i.e., ''OPPTS–400132'') in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Document Control Office in Rm. G-099, Waterside Mall, 401 M St., SW., Washington, DC, telephone: 202–260–7093.

3. *Electronically.* Submit your comments and/or data electronically by E-mail to: ''oppt.ncic@epamail.epa.gov.'' Please note that you should not submit any information electronically that you consider to be CBI. 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 standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–400132. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information that I Want to Submit to the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. Statutory Authority

These actions are proposed under sections 313(d)(1) and (2), 313(f)(2), and 328 of EPCRA, 42 U.S.C. 11023(d)(1)-(2), 11023(f)(2), and 11048.

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using a listed toxic chemical in amounts above reporting threshold levels, to report their environmental releases of each chemical annually. These reports must be filed by July 1 of each year for the previous calendar year. Facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of PPA.

A. Addition of Chemicals

Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. EPA has added and deleted chemicals from the original statutory list. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days, either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

EPCRA section 313(d)(2) states that a chemical may be added to the list if any of the three listing criteria set forth there are met. Therefore, in order to add a chemical, EPA must find that at least one criterion is met, but does not need to examine whether all other criteria are also met. EPA has published a statement elaborating its interpretation of the section 313(d)(2) and (3) criteria for adding and deleting chemicals from the section 313 list (59 FR 61432, November 30, 1994) (FRL–4922–2).

As discussed in Unit IV. of this preamble, EPA conducted a hazard assessment on each chemical being proposed for addition to the EPCRA section 313 list of toxic chemicals. This assessment was separate and independent from the review conducted to determine each chemical's persistence and bioaccumulation potential, although EPA considered some of the same data in certain of its hazard assessments. EPA found that each chemical being proposed for addition meets the criteria for chronic human toxicity and/or environmental toxicity, as set forth at EPCRA section 313(d)(2)(B)–(C).

B. Lowering of Reporting Thresholds

Section 313 contains default reporting thresholds, which are set forth in section 313(f)(1). Section 313(f)(2), however, provides that EPA ''may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1).'' The amounts established by EPA may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

This provision provides EPA with broad authority to establish thresholds for particular chemicals, classes of chemicals, or categories of facilities, and commits to EPA's discretion the determination that a different threshold is warranted. Congress has also committed the determination of the levels at which to establish an alternate threshold to EPA's discretion, requiring only that any ''revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements'' of section 313. 42 U.S.C. 11023(f)(2). For purposes of determining what constitutes a ''substantial majority of total releases'', EPA interprets ''facilities subject to the requirements'' of section 313 as the facilities currently reporting, in part because section 313(b)(1)(A) provides that ''the requirements of [section 313] shall apply'' to facilities that meet all the reporting criteria and hence are required to file reports. Thus, in revising the reporting thresholds, EPA must ensure that under the new thresholds a substantial majority of releases currently being reported will continue to be reported. No further guidance for exercising this authority appears in the statute.

While the ''substantial majority'' requirement of section 313(f)(2) applies whether EPA is raising or lowering thresholds, EPA believes that as a practical matter this standard can operate to constrain EPA's action only when the Agency is raising the thresholds and thereby reducing reporting. Under those circumstances the releases reported under the new threshold would be lower than those being reported under the current threshold, and EPA would be required to determine that the reduction in reporting would not be so great as to fail the ''substantial majority'' test. When EPA lowers thresholds, however, the substantial majority test is met as a matter of logical necessity, because the lower thresholds are almost always likely to result in increased, rather than decreased, reporting. The required findings therefore can be made without the need for quantitative support. Thus, EPA has found that the revised reporting thresholds contained in today's proposed action meet the ''substantial majority'' test in section 313(f)(2).

Because Congress provided no prerequisites to the exercise of EPA's authority to lower the thresholds, and little explicit guidance, EPA looked to the purposes of section 313 to help guide the exercise of its discretion. EPCRA section 313(h) indicates that the data collected under EPCRA section 313 are intended

> to inform persons about the releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines and standards, and for other similar purposes. (42 U.S.C. 11023(h)).

As EPA has previously articulated in another rulemaking, EPA has identified several purposes of the EPCRA section 313 program, as envisioned by Congress, including: (1) Providing a complete profile of toxic chemical releases and other waste management activities; (2) compiling a broad-based national data base for determining the success of environmental regulations; and (3) ensuring that the public has easy access to these data on releases of toxic chemicals to the environment. See 62 FR 23834, 23836 (May 1, 1997). EPA considered these purposes in exercising its discretion to establish lower reporting thresholds under EPCRA section 313 for persistent, bioaccumulative chemicals.

C. Modifications to Other EPCRA section 313 Reporting Requirements

Congress granted EPA extremely broad rulemaking authority to allow the Agency to fully implement the statute. EPCRA section 328 provides that the ''Administrator may prescribe such regulations as may be necessary to carry out this chapter'' (28 U.S.C. 11048).

III. Explanation for Lowering Reporting Thresholds

A. General Background

In 1986, Congress passed EPCRA. This new law recognized the unique role that communities can play in assuring environmental protection at the local level. Just prior to the passage of EPCRA, fatal chemical releases from a chemical manufacturing facility in Bhopal, India highlighted the need for developing and sharing both emergency planning information and routine release information with the public. The identification of United States facilities, chemicals, and processes identical to the Bhopal situation brought home the potential for similar accidents in the United States as well as a recognition that routine releases of toxic chemicals associated with routine facility processes could pose significant risks to communities. These routine, annual releases, if assessed at all, were known only to the facilities themselves. Communities however, were unaware of the magnitude and potential consequences of such releases.

Section 313 of EPCRA resulted in the creation of the Toxics Release Inventory (TRI). TRI is a publicly available data base that provides quantitative information on toxic chemical releases and other waste management activities. With the collection of this information for the first time in 1987, came the ability for the public, government, and the regulated community to understand the magnitude of chemical emissions in the United States; to compare chemical releases among facilities and transfers of chemical wastes among States, industries, and facilities; and perhaps most importantly, to assess the need to reduce and where possible, eliminate these releases and other waste management activities. TRI enables all parties interested in environmental progress to establish credible baselines, to set realistic goals, and to measure progress over time, in meeting those goals. The TRI system provides a neutral yardstick by which progress can be measured by all interested parties. TRI is an important tool in empowering the Federal government, State governments, industry, environmental groups, and the general public, to fully participate in an informed dialogue about the environmental and human health impacts of toxic chemical releases and other waste management activities.

Prior to EPCRA, the kind of information contained in the TRI generally was nonexistent or unavailable to the Federal government, State governments, emergency preparedness teams or the general public, and often was not disclosed until after major impacts on human health and the environment were evident. This ''after the fact'' disclosure of information did little to help plan for or prevent such serious health and environmental impacts. While permit data are generally cited as a public source of environmental data, they are often difficult to obtain, are not cross-media, and present only a limited perspective on a facility's overall environmental performance. While other sources of data are sometimes cited as substitutes for TRI data, based on its own research, EPA is unaware of any other publicly available, nationwide data base that provides multi-media, facility-specific release and other waste management information to the public in a readily accessible form. With TRI, and the real gains in understanding it has produced, communities now know which industrial facilities in their area release or otherwise manage as waste listed toxic chemicals.

Under EPCRA section 313, Congress set the initial parameters of TRI, but also gave EPA clear authority to modify TRI in various ways, including to change the toxic chemicals subject to reporting, the facilities required to report, and the threshold quantities that trigger reporting. By providing this authority, Congress recognized that the TRI program would need to evolve to meet the needs of a better informed public and to refine existing information. EPA has, therefore, undertaken a number of actions to expand and enhance TRI. These actions include expanding the number of reportable toxic chemicals by adding 286 toxic chemicals and chemical categories to the EPCRA section 313 list in 1994. Further, a new category of facilities was added to EPCRA section 313 on August 3, 1993, through Executive Order 12856, which requires Federal facilities meeting threshold requirements to file annual TRI reports. In addition, in 1997 EPA expanded the number of private sector facilities that are required to report under EPCRA section 313 by adding seven new industrial groups to the list of covered facilities. At the same time, EPA has sought to reduce the burden of EPCRA section 313 reporting by actions such as delisting chemicals that were

determined not to meet the statutory listing criteria and establishing an alternate reporting threshold of 1 million pounds for facilities with 500 pounds or less of production-related releases and other wastes. Facilities meeting the requirements of this alternate threshold may file a certification statement (Form A) instead of reporting on the standard TRI report, the Form R.

In today's actions, EPA is proposing enhanced reporting requirements that focus on a unique group of toxic chemicals. These toxic chemicals which persist and bioaccumulate in the environment are more commonly referred to as persistent bioaccumulative toxics or PBTs. To date, with the exception of facilities subject to the alternate threshold exemption, EPA has not altered the statutory reporting threshold for all listed chemicals. However, as the TRI program has evolved over time and as communities identify areas of special concern, thresholds and other aspects of the EPCRA section 313 reporting requirements may need to be modified to assure the collection and dissemination of relevant, topical information and data. Towards that end, EPA is proposing to increase the utility of TRI to the public by adding a number of chemicals that are toxic and that persist and bioaccumulate in the environment to the section 313 list and by lowering the reporting thresholds for a number of toxic chemicals that have these properties. Toxic chemicals that persist and bioaccumulate are of particular concern because they remain in the environment for significant periods of time and concentrate in the organisms exposed to them. EPA believes it is important that the public understand that these persistent bioaccumulative toxic (PBT) chemicals can have serious human health and environmental effects resulting from low levels of release and exposure. Lowering the reporting thresholds for PBT chemicals would ensure that the public has important information on the quantities of these chemicals released or otherwise managed as waste, that would not be reported under the current thresholds.

B. Use of EPCRA Section 313 to Focus on Chemicals that Persist and Biaccumulate

As discussed in Unit VII.A. of this preamble, EPA is proposing to lower the EPCRA section 313 reporting thresholds for certain PBT chemicals. A chemical's persistence refers to the length of time the chemical can exist in the environment before being destroyed by natural processes. Bioaccumulation is a general term that is used to describe the process by which organisms may accumulate certain chemicals in their bodies. The term refers to both uptake of chemicals from water (bioconcentration) and from ingested food and sediment residues. PBT chemicals are therefore toxic chemicals that partition to water, sediment, or soil and are not removed at rates adequate to prevent their bioaccumulation in aquatic or terrestrial species. Chemicals that persist and bioaccumulate have been found in shellfish, birds, human adipose tissue, and other mammals. See Unit V. of this preamble for a more detailed discussion of and definitions for the terms persistence and bioaccumulation.

Review of existing data leads EPA to believe that, as a general matter, the release to the environment of toxic chemicals that persist and bioaccumulate is of greater concern than the release of toxic chemicals that do not persist or bioaccumulate. Since PBT chemicals can remain in the environment for a significant amount of time and can bioaccumulate in animal tissues, even relatively small releases of such chemicals from individual facilities have the potential to accumulate over time to higher levels and cause significant adverse impacts on human health and the environment. EPA believes that the availability of information on PBT chemicals is a critical component of a community's right-to-know. Therefore, it is particularly important to gather and disseminate to the public relevant information on the releases and other waste management activities of PBT chemicals.

Thus, for PBT chemicals, releases and other waste management activities that occur at facilities that manufacture, process, or otherwise use such chemicals in relatively small amounts are of concern. Under current reporting thresholds, a significant amount of the releases and other waste management activities involving PBT chemicals are not being captured and thus the public does not have the information needed to determine if PBT chemicals are present in their communities and at levels that may pose a significant risk. By lowering the section 313 reporting thresholds for PBT chemicals EPA would be providing communities across the United States with access to data that may help them in making this determination. This information could also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment.

Several EPA offices have ongoing projects and programs that are dealing with issues concerning PBT chemicals. EPA has established the PBT planning group which is a coordinating body consisting of representatives from various program offices throughout EPA that are dealing with PBT chemicals. This group has developed a strategy to reduce pollution from PBT chemicals through the application of regulatory and non-regulatory authorities, with a strong emphasis on pollution prevention. Under this initiative, the reporting of PBT chemicals under EPCRA section 313 will provide data on PBT chemicals to EPA, industry, and the public. The availability of that data can allow all parties to identify and track releases of PBT chemicals and monitor the progress of the programs designed to reduce the amount of PBT chemicals entering the environment. The data will also allow EPA and others to design prevention strategies that are focused and effective.

EPA is also participating in several international efforts to reduce or eliminate pollution from PBT chemicals. These efforts include the Commission for Environmental Cooperation (CEC) Process for Identifying Candidate Substances for Regional Action under the Sound Management of Chemicals Initiative, the United Nations Environment Programme Persistent Organic Pollutants (POPs) Negotiations, and the Canada-United States Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes Basin.

The program between the United States and Canada focuses on pollution of the Great Lakes by PBT chemicals, which has been a matter of great concern for both countries. EPA has established the Great Lakes National Program Office (GLNPO) to develop and implement programs to reduce pollution of the Great Lakes. GLNPO works in cooperation with counterpart organizations in Canada, most notably Environment Canada, to carry out its mission. The ''Final Water Quality Guidance for the Great Lakes System'' (60 FR 15366, March 23, 1995) (FRL–5173–7) identified ''Pollutants that are bioaccumulative chemicals of concern (BCCs)'' among the ''Pollutants of Initial Focus in the Great Lakes Water Quality Initiative.'' Working with that list, Canada and the United States agreed on an initial list of chemicals identified as ''Substances Targeted by the Canada-United States Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes Basin''

(Ref. 1). A subset of the targeted substances is often referred to as the ''Binational Level 1 List,'' and includes chemicals both countries have committed to ''virtually eliminate'' from the Great Lakes. Virtual elimination is to be attained by programs implemented voluntarily by each country.

EPA discussed the issue of reporting on PBT chemicals under section 313 in its January 12, 1994 chemical expansion proposed rule (59 FR 1788) (FRL–4645–6). In the preamble to the proposed rule, EPA specifically requested comment on whether PBT chemicals should be added to the section 313 list. EPA also asked for comments on what modifications to reporting requirements, such as lowering reporting thresholds or modifying the *de minimis* exemption, would need to be made in order to insure that release and transfer information would be collected for such chemicals. In response to EPA's request for comments on the reporting of PBT chemicals, 39 commenters responded, with 35 of these commenters fully supporting such reporting under section 313. In addition, of the over 620 comments EPA received on its 1997 proposal to add a dioxin and dioxin-like compounds category, over 520 commenters supported lowering the reporting thresholds for the proposed category. Many commenters also suggested that EPA lower the reporting threshold for all toxic chemicals that persist and bioaccumulate. EPA will provide specific responses to these comments as part of any final rule developed to add the dioxin and dioxin-like compounds category to the section 313 list and lower the reporting thresholds.

C. Overview of EPA Process for Developing Its Proposal

This section presents a summary of the processes EPA used to: (1) Develop the persistence and bioaccumulation criteria the Agency is proposing to adopt for purposes of determining whether a chemical is persistent and bioaccumulative under EPCRA section 313; (2) identify the persistent and bioaccumulative chemicals the Agency has chosen to propose for addition in this rulemaking; and (3) determine the appropriate thresholds for the individual toxic chemicals the Agency has identified as persistent and bioaccumulative. A more extensive discussion of EPA's rationales for each of the decisions made during this process is presented throughout the various other sections of this Notice.

As noted in section B. of this unit, much work has already been done, both nationally and internationally, to identify chemicals that could reasonably be anticipated to persist and bioaccumulate. Having determined, for the reasons discussed generally in section B. of this unit, to lower the EPCRA section 313 thresholds for persistent bioaccumulative toxic chemicals, EPA began by reviewing the criteria develop by various organizations.

As discussed in further detail in Unit V.A-B. of this preamble, EPA found that generally the various criteria for both persistence and bioaccumulation clustered around two criteria. For persistence in water, soil, and sediment, the criteria were grouped around half-lives of 1 to 2 months and 6 months, and for persistence in air, either 2 or 5 days. Bioaccumulation criteria were grouped around bioaccumulation factor and/or bioconcentration factor values of 1,000 and 5,000. Bearing in mind that one of Congress's articulated purposes for EPCRA section 313 was to provide local communities with relevant information on the release and other waste management activities of chemicals in their community, that may present a hazard, EPA determined that the criteria that were most consistent with these purposes were, for persistence, half-lives of 2 months for water, sediment, and soil, and 2 days in air, and for bioaccumulation, bioaccumulation/bioconcentration factor values of 1,000 or greater.

EPA developed a preliminary list of chemicals for consideration in this rulemaking by reviewing the chemicals on the Great Lakes Binational Toxics Strategy, Level 1 list and chemicals that had received high scores for persistence and bioaccumulation from EPA's Office of Solid Waste's Waste Minimization Prioritization Tool (WMPT). EPA dropped from further consideration in this rulemaking certain pesticide chemicals included on the Level 1 list, for which assessments were not yet complete. The screening process described here is not part of this rulemaking, but was merely a process designed to identify candidate chemicals for further consideration in this rulemaking. It was not used to select chemicals for addition or to determine for which chemicals a lower threshold would be warranted. The process was intended to allow the Agency to establish internal priorities and to focus its limited resources in this initial rulemaking on those toxic chemicals that would result in significant environmental and public information benefits. The fact that a chemical was not included, either as a result of EPA's screening processes, or as a result of one of the assessments conducted during the rulemaking, does not mean that EPA has finally concluded that the chemical does not persist or bioaccumulate, or that the chemical does not warrant any further consideration under EPCRA section 313.

As an initial step in its rulemaking process, EPA examined the underlying persistence and bioaccumulation data for each of the chemicals that remained after the screening process, and measured the chemicals against EPA's chosen criteria for persistence and bioaccumulation. Only if the chemical met both criteria did EPA determine that in this rulemaking it would be appropriate to lower the EPCRA section 313 ''manufacture,'' ''processing,'' and ''otherwise use'' reporting thresholds. In addition, for the chemicals that were not yet listed under EPCRA section 313, EPA conducted a hazard assessment, and determined, based on the weight of all of the evidence, whether the chemicals met the statutory criteria for listing under EPCRA section 313(d)(2). Note that the EPCRA section 313(d)(2)(C) ecotoxicity criteria include a consideration of data on a chemical's persistence and bioaccumulation (see section 313(d)(2)(C)(ii) and (iii)).

In determining the thresholds for this rulemaking, EPA preliminarily concluded that it would be appropriate to reflect the levels of concern that the various PBT chemicals presented, based on the differing degrees to which the chemicals persist and bioaccumulate. The Agency ultimately chose to adopt a two-tier approach, and to establish two separate thresholds to reflect the chemicals' varying potentials to persist and bioaccumulate, as well as to reflect the Agency's belief that the public has a greater right-to-know about chemicals that can reasonably anticipated to be present in the community at higher levels.

To reach the appropriate levels of concern, the Agency again considered the range of criteria for persistence and bioaccumulation adopted by various organizations, settling again on the criteria of bioaccumulation/bioconcentration factor values of 1,000 and 5,000, and half-lives for soil, sediment, and water of 2 and 6 months. Those chemicals with a bioaccumulation/bioconcentration factor value of 1,000 or greater but less than 5,000, and with a soil, sediment, or water half-life of 2 months or greater but less than 6 months, were considered to be persistent bioaccumulative toxic chemicals, and therefore a low, alternate threshold would be justified. However, those toxic chemicals with a bioaccumulation/bioconcentration factor value of 5,000 or greater, and with

a soil, sediment, or water half-life of 6 months or greater were considered to be highly persistent bioaccumulative toxic chemicals, and EPA determined that an even lower threshold would be appropriate. Because of the unique issues associated with establishing EPCRA section 313 thresholds for the category of dioxin and dioxin-like compounds, EPA is proposing a separate, and even lower, threshold for this chemical category.

Finally, although EPCRA section 313(f)(2) does not compel the Agency to consider the burden to industry resulting from a lower threshold, EPA has determined it would be reasonable, in this rulemaking, to include some consideration of the additional burden involved in lowering the statutory thresholds. While EPA is willing to consider reporting burden in determining appropriate thresholds for the PBT chemicals in the rule, the Agency must be mindful that the authors of EPCRA, while sensitive to the burdens EPCRA section 313 reporting placed on industry, never intended this consideration to outweigh the public's need for access to information concerning their potential exposure to toxic chemicals. See, e.g., Congressional Record at 5315-16 and 5338-39 (debate on adoption of the Conference Report). In light of the authors' concerns, the Agency has identified two alternate sets of thresholds, which afford a greater or lesser degree of weight to the estimates of industry burden, and is requesting comment on the propriety of the degree to which burden should be taken into account in this rulemaking, and which set of thresholds the Agency should adopt.

IV. Chemicals Proposed for Addition to EPCRA Section 313

A. Statutory Criteria

In an initial review of PBT chemicals that appear on the list of chemicals of concern in the various PBT chemical initiatives, EPA has identified seven chemicals and one category of chemicals that persist and bioaccumulate in the environment that are not currently subject to reporting under section 313. For these chemicals a hazard assessment was conducted to determine if they meet the EPCRA section 313(d)(2) criteria for listing. Although identification of these chemicals for initial consideration has been based on their status as PBT chemicals, their proposed addition is based solely on the determination that they meet the EPCRA section 313(d)(2)(B) or (C) listing criteria. EPCRA section 313(d)(2) sets out criteria for adding chemicals to the list of chemicals subject to reporting under section 313. For a chemical (or category of chemicals) to be added to the EPCRA section 313(c) list of toxic chemicals, the Administrator must determine whether, in her judgment, there is sufficient evidence to establish any one of the following:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans-

(i) cancer or teratogenic effects, or

(ii) serious or irreversible-

(I) reproductive dysfunctions,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

(C) The chemical is known to cause or can reasonably be anticipated to cause, because of-

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or

(iii) its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA has published additional information on the Agency's interpretation of the section 313(d)(2) and (3) criteria for adding chemical substances from the section 313 list (59 FR 61432). All of the chemicals being proposed for listing in this proposed rule have been determined to cause serious or irreversible chronic effects at relatively low doses or ecotoxicity at relatively low concentrations, and thus are considered to have moderately high to high chronic toxicity or high ecotoxicity. EPA believes that chemicals that induce death or serious adverse effects on aquatic organisms at relatively low concentrations (i.e., they have high ecotoxicity), have the potential to cause significant adverse effects on the environment due to the changes that these chemicals may cause in the population of fish and other aquatic organisms. EPA believes that such chemicals can reasonably be anticipated to cause a significant adverse effect on the environment of sufficient seriousness to warrant reporting. Therefore, in accordance with EPA's stated policy on the use of exposure assessments (59 FR 61432), EPA does not believe that an exposure assessment is appropriate for determining whether the chemicals proposed for listing in this rulemaking meet the criteria of EPCRA section 313(d)(2)(B) or (C).

B. Use of Predictive Techniques

Three of the chemicals being proposed for listing (benzo(g,h,i)perylene, 3-methylcholanthene, and octachlorostyrene) have been found to meet the EPCRA section 313(d)(2)(C) criteria for ecotoxicity based on predicted aquatic toxicity values generated from quantitative structure activity relationship (QSAR) equations and other predictive techniques. As previously stated (58 FR 63500, December 1, 1993), EPA believes that, where no or insufficient actual measured aquatic toxicity data exist upon which to base a decision, toxicity predictions generated by QSARs and other predictive techniques may constitute sufficient evidence that a chemical meets the section 313 listing criteria. EPA's authority to use such predictive techniques derives from section 313(d)(2) of the statute, which states that EPA shall base its listing determinations on, *inter alia*, ''generally accepted scientific principles.'' EPA believes that the aquatic QSAR equations that are in widespread use and show a high correlation between predicted and measured aquatic toxicity values can be considered to be ''generally accepted scientific principles'' and can appropriately form the basis of a listing determination (Ref. 2).

C. Technical Review of Chemicals Proposed for EPCRA Section 313 Listing

Summaries of the results of the hazard assessments for the seven chemicals and one chemical category that are being proposed for addition to section 313 are provided below. Additional information and more detailed discussions concerning the toxicity of these chemicals can be found in the support documents in the docket for this rulemaking. Commenters should consult the support documents and review the studies contained and referenced in the docket for further details.

1. *Benzo(g,h,i)perylene (CAS No. 191–24–2) (Ref. 2).* The predicted aquatic toxicity values for benzo(g,h,i)perylene, based on QSAR analysis using the equation for neutral organics and an estimated log K_{ow} of 6.7, include calculated values of 0.030 milligrams per liter (mg/L) for the fish 96–hour LC_{50} (i.e., the concentration that is lethal to 50% of test organisms) and 0.0002 mg/L for fish chronic toxicity, 0.012 mg/L for the daphnid 48-hour LC_{50} and 0.027 mg/L for the 16–day chronic LC_{50}, and 0.03 mg/L for the algae 96–hour

EC_{50} (i.e., the concentration that is effective in producing a sublethal response in 50% of test organisms) with an algal chronic toxicity of 0.012 mg/L. These predicted aquatic toxicity values indicate that benzo(g,h,i)perylene is toxic at relatively low concentrations and thus is highly toxic to aquatic organisms. EPA believes that the evidence is sufficient to list benzo(g,h,i)perylene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity information for this chemical.

2. *Benzo(j,k)fluorene (fluoranthene) (CAS No. 206–44–0) (Ref. 2).* Benzo(j,k)fluorene or fluoranthene as it is more commonly called, has been tested for complete carcinogenic activity by skin painting in various strains of mice and for tumor-initiating activity using mouse skin initiation-promotion assays and no significant activities were detected in any of these studies. However, using newborn or preweanling mice, there was evidence that the compound was capable of inducing lung and liver tumors. In addition, a reactive metabolite of fluoranthene has been shown to induce mammary tumors in rats.

The potential pulmonary carcinogenicity of fluoranthene was first reported in a 24-week newborn mouse lung adenoma assay. Newborn Swiss-Webster BLU:Ha (ICR) mice were given intraperitoneal injections of 0.7 or 3.5 mg fluoranthene in dimethyl sulfoxide (DMSO) on days 1, 8, and 15 after birth and observed for 24 weeks. Lung tumor incidence was significantly increased in high-dose males (20 out of 27 versus 1 out of 27 in the control) but not in low-dose males or females of both dose groups. The pulmonary carcinogenicity of fluoranthene was confirmed using newborn CD-1 mice. In addition, liver tumors were observed in male mice after 9 months of treatment. In another study using newborn CD-1 mice given 3.5 or 17.3 micromoles fluoranthene for 1 year pulmonary and hepatic carcinogenic activities were also observed. The lung tumor incidence was significantly increased in all dosed groups (in males: 43% at the low-dose and 65% at the high-dose versus 17% in the control group; in females: 35% at the low-dose and 86% at the high-dose versus 12% in the control group) whereas only male mice had higher incidence of liver tumors (64% at the low-dose and 100% at the high-dose versus 17% in the control group).

A genotoxic, ''pseudo-bay'' region diol epoxide metabolite of fluoranthene has been shown to induce mammary tumors in female CD rats. In this study, lightly anesthetized 30-day-old rats were given two injections of 2 or 10 micromoles of anti-2,3-dihydroxy-1,10b-epoxy-10b,1,2,3-tetrahydro-fluoranthene in DMSO directly into mammary tissues beneath the three left thoracic nipples and DMSO under the right nipples. After 41 weeks, 85% of the treated groups developed histologically confirmed mammary tumors, compared to 11% in DMSO control group. The potential mammary carcinogenic activity of fluoranthene itself remains to be studied.

Fluoranthene has been shown to be mutagenic in the Ames test, in a Salmonella forward mutation assay (with potency comparable to that of benzo[a]pyrene), and in a human diploid lymphoblast cell line. A ''pseudo-bay'' region diol epoxide has been detected as a metabolite and found to be highly mutagenic and carcinogenic as well as capable of binding to DNA. Besides genotoxic mechanisms, fluoranthene has also been shown to be a potential immunosuppressive agent as indicated by its ability to suppress B lymphopoiesis and induce apoptosis (programmed cell death) in murine T cell hydridomas.

The International Agency for Research on Cancer concluded that there is inadequate evidence to permit an evaluation of the carcinogenicity of fluoranthene. EPA has listed the compound as a Group D (not classifiable as to carcinogenicity in humans). However, in both cases, recent studies indicating pulmonary and hepatic carcinogenicity as well as mechanistic studies were not fully taken into account at the time of the reviews.

Based on the overall ''weight of evidence'' for carcinogenicity, genotoxicity, metabolism and mechanistic data and consideration of structure-activity relationships, and despite the lack of dermal carcinogenicity, fluoranthene should be classified as a Group ''C'' carcinogen under the ''weight of evidence'' approach of EPA's 1986 Guidelines for Carcinogen Risk Assessment (51 FR 33992, September 24, 1986) because of positive carcinogenicity data in one animal species. Under EPA's 1996 Proposed Guidelines for Carcinogen Risk Assessment (61 FR 17959, April 23, 1996) fluoranthene would most appropriately fall in the category ''likely'' to produce cancer in humans. EPA believes that the evidence is sufficient for listing fluoranthene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

Section 313 contains a listing for polycyclic aromatic compounds (PACs). All of the members of this category are listed based on concerns for their carcinogenicity. Since part of the basis for listing fluoranthene under section 313 is a concern for carcinogenicity this chemical is being proposed for addition to the section 313 PACs category.

A number of studies have been conducted on the ecotoxicity of fluoranthene. Ecotoxicity values include a calculated 96–hour LC_{50} of 3.9 mg/L for bluegill, a 96–hour LC_{50} of 0.04 mg/L for mysid shrimp, and a 96–hour LC_{50} of 5.0 mg/L for a polychaete. Using standard acute toxicity tests, benzo(j,k)fluorene has been tested in 12 freshwater species from 11 genera. For freshwater benthic species, the acute 96–hour LC_{50} calculated values are 0.032 mg/L for an amphipod (*Gammarus minus*), 0.070 mg/L for a hydra (*Hydra americana*), 0.17 mg/L for an annelid (*Lumbriculus variegatus*), and 0.17 mg/L for a snail (*Physella virgata*). For saltwater species, the 96–hour LC_{50} values are 0.051 mg/L for a mysid (*Mysidopsis bahia*), 0.066 mg/L for an amphipod (*Ampelisca abdita*), 0.14 mg/L for a grass shrimp (*Palaemonetes pugio*), and 0.50 mg/L for an annelid (*Neanthes arenaceodentata*). Fathead minnows exposed to benzo(j,k)fluorene at a concentration of 0.0217 mg/L for 28 days in chronic early life-stage test showed a reduction of 67% in survival and a 50.2% reduction in growth relative to the controls. In a 28-day chronic study, mysids exposed to 0.021 mg/L of benzo(j,k)fluorene showed a 26.7% reduction in survival and a 91.7% reduction in reproduction; at 0.043 mg/L all mysids died. In a 31-day study, mysids showed a reduction of 30% in survival, 12% in growth, and 100% in reproduction relative to controls at a concentration of 0.018 mg/L of benzo(j,k)fluorene. These aquatic toxicity values indicate that benzo(j,k)fluorene is toxic at relatively low concentrations and thus is highly toxic to aquatic organisms. EPA believes that the evidence is sufficient to list benzo(j,k)fluorene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity information for this chemical.

3. *3-Methylcholanthrene (CAS No. 56–49–5) (Ref. 2).* 3-Methylcholanthrene has been clearly shown to be a multi-target potent carcinogen in a variety of studies with a potency that exceeds or is comparable to that of the well known potent carcinogen benzo[a]pyrene. 3-Methylcholanthrene has been found to be a potent carcinogen in rodents by a variety of routes of administration. It

has been shown to induce skin tumors and local sarcomas by topical and subcutaneous routes, respectively, with a potency higher than that of benzo[a]pyrene. 3-Methylcholanthrene has induced lung tumors in mice by intravenous injection and in addition to skin tumors it produced a 100% incidence of leukemia in mice after repeated skin application. Following oral administration, 3-methylcholanthrene induced hepatomas in Wistar rats maintained on a low protein diet and in newborn suckling albino mice, it also induced mammary tumors in young female rats, induced forestomach tumors in rodents, and skin tumors in young rats. Oral administration of 3-methylcholanthrene to hamsters induced intestinal, mammary, and ovarian tumors. 3-Methylcholanthrene has been shown to be positive in a wide variety of gene mutation assays, in cell transformation assays using nine different cell types, and in both *in vitro* and *in vivo* sister chromatid exchange assays. *In vivo* binding of 3-methylcholanthrene to DNA in mouse cells has also been demonstrated.

Considering structure-activity relationships, 3-methylcholanthrene does contain the characteristic ''bay-region'' found in most carcinogenic polycyclic aromatic hydrocarbons. Metabolism and mechanistic data indicate that the bay-region 9,10-dihydrodiol of 3-methylcholanthrene is a proximate carcinogen of this chemical in the newborn mouse model and most likely also in the initiation-promotion model with the bay-region diol epoxide being the ultimate carcinogen. There is also some possibility that 1-hydroxylation of 3-methylcholanthrene may be another additional metabolic activation pathway.

Although not evaluated in EPA's IRIS data base, based on the overall ''weight of evidence'' for carcinogenicity, genotoxicity, metabolism, and mechanistic data and SAR consideration, 3-methylcholanthrene would be classified as a Group B2 carcinogen (i.e., it is a probable human carcinogen) under the ''weight of evidence'' approach of EPA's 1986 Guidelines for Carcinogen Risk Assessment (51 FR 33992, September 24, 1986) (FRL–2984–3), and would fall in the category ''likely'' to produce cancer in humans under EPA's 1996 Proposed Guidelines for Carcinogen Risk Assessment (61 FR 17959, April 23, 1996) (FRL–5460–3). EPA believes that the evidence is sufficient for listing 3-methylcholanthrene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

Section 313 contains a listing for PACs. All of the members of this category are listed based on concerns for their carcinogenicity. Since part of the basis for listing 3-methylcholanthrene under section 313 is a concern for carcinogenicity this chemical is being proposed for addition to the section 313 PACs category.

The predicted aquatic toxicity values for 3-methylcholanthrene, based on QSAR analysis using the equation for neutral organics and an estimated log K_{ow} of 7.05, include a calculated fish 96–hour LC_{50} of 0.009 mg/L and a chronic fish toxicity value of 0.003 mg/L, a daphnid 48–hour LC_{50} of 0.005 mg/L and a 16–day chronic LC_{50} of 0.015 mg/L, and an algae 96–hour EC_{50} of 0.0105 mg/L with a calculated chronic toxicity value of 0.014 mg/L. These predicted aquatic toxicity values indicate that 3-methylcholanthrene is toxic at relatively low concentrations and thus is highly toxic to aquatic organisms. EPA believes that the evidence is sufficient to list 3-methylcholanthrene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity information for this chemical.

4. *Octachlorostyrene (CAS No. 29082–74–4) (Ref. 2).* A short-term (28–day) study and a subchronic (90–day) feeding study of rats demonstrated that octachlorosytrene can cause adverse liver, thyroid, and kidney effects. In the 28–day study, hepatomegaly and a dose-dependent increase in the prevalence and severity of liver injury (histological changes) were seen in both male and female rats. In male rats only, histological changes in the thyroid (including increased epithelial height, reduced colloid density, and angular collapse of thyroid follicles) were observed; suggesting male rats are more sensitive to the thyroid-toxic effects of octachlorosytrene than females. In the 90–day study, a number of adverse effects not detected in the 28–day study were observed. Increased liver, kidney, and spleen weights were observed in both male and female rats, while only increased liver weights were seen in the 28–day study. Dose-dependent histological effects were seen in the liver, thyroid, and kidney of treated animals in the 90–day study. Kidney lesions, not detected in the 28–day study, became more pronounced with increasing dose in the 90–day study. Kidneys of treated rats showed glomerular adhesions associated with proteinaceous casts in the lower nephron and focal tubular. In addition, changes in hepatic enzyme activities and serum biochemical parameters were noted in both the 28- and 90–day studies. A 1 year oral study of rats (20 per gender and per dose group) exposed the animals to 0, 0.05, 0.5, 5.0, and 50 parts per million (ppm) of octachlorostyrene in the diet. Morphological changes in the liver, kidney, and thyroid were similar to the effects observed in the 28 and 90–day studies. The 1 year study found the histological effects in affected organs to be the most sensitive endpoint. Although the histological changes could be detected at doses as low as 0.05 ppm, at these low doses changes were judged to be minor and probably adaptive. The No Observed Adverse Effect Level (NOAEL) was judged by the study authors to be 0.5 ppm in the diet or 0.031 milligrams per kilogram per day (mg/kg/day). Correspondingly, the Lowest Observed Adverse Effect Level (LOAEL) would be 5.0 ppm in the diet or 0.31 mg/kg/day for significant histological changes in the liver, kidney, and thyroid. Statistically significant increases in organ weights, such as those discussed above, are gross indicators of damage to the organ and significant histological changes in organs indicate serious damage and impaired organ functions. EPA believes that the evidence is sufficient for listing octachlorostyrene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic, nephric, and thyroid toxicity data for this chemical.

The ecotoxicity data for octachlorostyrene are very limited. However, based on QSAR analysis using a measured log K_{ow} of 7.7, an estimated 14–day LC_{50} value of 6 micrograms per liter (µg/L) for guppies has been calculated for octachlorosytrene. In addition, toxicity data for hexachlorobenzene, a chemical analogue for octachlorostyrene due to its structural similarity, is available. Hexachlorobenzene inhibits photosynthesis in algae at a concentration of 30 µg/L and a subchronic EC_{50} value of 16 µg/L has been calculated for daphnids. These predicted and analogue aquatic toxicity values indicate that octachlorostyrene is toxic at relatively low concentrations and thus is highly toxic to aquatic organisms. EPA believes that the evidence is also sufficient to list octachlorosytrene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity information for this chemical.

5. *Pentachlorobenzene (CAS No. 608–93–5) (Ref. 2).* A subchronic, 90–day,

feeding study on pentachlorobenzene has been conducted that utilized 8 experimental groups (3 male, 5 female) of 10 rats each. A statistically significant increase in kidney weights, decreased heart weights, and an increase in hyaline droplets in proximal kidney tubules was noted in male rats receiving 8.3 mg/kg/day (125 ppm in diet). Female rats receiving the next highest dose, 18 mg/kg/day (250 ppm in diet), and their offspring showed increased liver/body weight ratios. At higher doses, up to 72 mg/kg/day (1,000 ppm in diet), animals of both sexes showed hepatocellular enlargement, increase in adrenal and kidney weights, increased white blood cell (WBC) counts, and lowered red blood cell (RBC) indices. The lowest dose of 8.3 mg/kg/day is considered a LOAEL from this study. The results of this subchronic feeding study were used by EPA to establish an oral reference dose (RfD) for pentachlorobenzene. A second 13-week feeding study in rats and mice used lower feed concentrations of pentachlorobenzene than the above study (i.e., 0, 33, 100, 330, 1,000 or 2,000 ppm) and 10 animals of each sex per group per species. Evidence of kidney, liver, hematological, and thyroid toxicity were observed, supporting the results of first study. In male rats, histological lesions included a spectrum associated with hydrocarbon or hyaline droplet nephrology. Nephropathy was seen in rats of both sexes. Both rats and mice exhibited centrilobular hepatocellular hypertrophy. The data from these subchronic exposure feeding studies indicate that oral exposure to pentachlorobenzene may have serious toxic effects to the kidney and liver as well as serious hematological effects. Statistically significant increases in organ weights, such as those discussed above, are gross indicators of damage to the organ and significant histological changes in organs indicate serious damage and impaired organ functions.

In one study, dose groups of 10 female weanling rats were exposed to 0, 125, 250, 500, or 1,000 ppm of pentachlorobenzene in feed. The dams were treated for 67 days, then mated with untreated males and treated continually through gestation and nursing. Suckling pups of dams receiving 18 mg/kg/day (250 ppm in feed) and higher doses of pentachlorobenzene through gestation and weaning developed tremors. The pups and dams at this dose or higher also exhibited increased liver/body weight ratios. Almost all (28% survival rate from day 4 to weaning) of the pups in the high dose group (1,000 ppm) died before weaning. In another study using a different strain of rats, groups of 20 mated female rats were treated with 0, 50, 100, or 200 mg/kg/day of pentachlorobenzene by gavage at days 6 to 15 of gestation. The authors of the study reported a significant increase in skeletal abnormalities (extra ribs) in pups whose mothers had been treated with all levels of pentachlorobenzene. At 200 mg/kg/day of pentachlorobenzene an increase in sternal defects, a decrease in fetal body weights, and a nonsignificant decrease in the number of fetuses per litter was reported.

EPA believes that the evidence is sufficient for listing pentachlorobenzene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic, nephric, hematological, and developmental toxicity data for this chemical.

A number of ecotoxicity studies have been conducted on pentachlorobenzene including studies on algae, daphnids, shrimp, and fish. Aquatic acute toxicity calculated values for pentachlorobenzene include a sheepshead minnow 96–hour LC_{50} of 0.83 mg/L, bluegill sunfish 96–hour LC_{50}s of 0.25 mg/L and 0.3 mg/L, a guppy 96–hour LC_{50} of 0.54 mg/L, and a mysid shrimp 96–hour LC_{50} of 0.16 mg/L. These acute toxicity values indicate that pentachlorobenzene is toxic at relatively low concentrations and thus is highly toxic to aquatic organisms. Additional acute toxicity calculated values include algae 96–hour EC_{50}s of 1.98 mg/L and 6.78 mg/L, and daphnia 48-hour EC_{50}s of 1.3 mg/L and 5.28 mg/L. Considering pentachlorobenzene's persistence and bioaccumulation potential (discussed in Unit V.C.1. of this preamble) pentachlorobezene is considered highly toxic to aquatic organism even at these higher concentrations. EPA believes that the evidence is sufficient to list pentachlorobenzene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity information for this chemical.

6. *Tetrabromobisphenol A (CAS No. 79–94–7) (Ref. 2).* In a study completed in 1985 and submitted to EPA in 1992, tetrabromobisphenol A was shown to produce developmental effects in rats. The study appears to have followed testing guidelines applicable at the time it was conducted and uses an adequate number of animals (25 per dose group) to allow statistical analysis. In the study, tetrabromobisphenol A was administered to rats by gavage in corn oil from day 6 through 15 of gestation at doses of 0, 2.5, 10, or 25 mg/kg/day. The study found a LOAEL of 10 mg/kg/day for significantly reduced fetal body weights when analyzed on a litter basis. At 25 mg/kg/day, slight maternal toxicity, increased frequency of resorption and delayed ossification and other abnormalities in offspring were observed. Malformations and developmental delays included significant increases in the litter incidences of fetuses with enlarged hearts, rear limb malformations, and ''remarkable'' delays in the ossification of the skull, vertebrae, ribs, and pelvis. Two other studies of rats using fewer animals (five per dose group) did not report evidence of developmental toxicity in offspring although higher doses were used and maternal death was reported. However, it is likely that these other studies lacked the sensitivity necessary to detect the effects reported in the first study. EPA believes that the evidence is sufficient for listing tetrabromobisphenol A on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical.

A number of ecotoxicity studies have been conducted on tetrabromobisphenol A including studies on algae, daphnids, shrimp, oysters, and fish. Aquatic acute toxicity calculated values for tetrabromobisphenol A include a fathead minnow 96–hour LC_{50} of 0.54 mg/L, a rainbow trout 96–hour LC_{50} of 0.40 mg/L, a bluegill sunfish 96–hour LC_{50} of 0.51 mg/L, and a daphnid 48–hour LC_{50} of 0.96 mg/L; mysid shrimp 96–hour LC_{50} values ranged from 0.86 to 1.2 mg/L depending on the age of the shrimp. Aquatic chronic toxicity calculated values from a Daphnia 21-day study resulted in a Maximum Acceptable Toxicant Concentration (MATC) that was between 0.30 and 0.98 mg/L (geometric mean 0.54 mg/L) based on a significant reduction in reproduction rates; a fathead minnow 35-day study resulted in a MATC that was calculated to be between 0.16 and 0.31 mg/L (geometric mean 0.22 mg/L) based on adverse effects on embryo and larval survival. These aquatic toxicity values indicate that tetrabromobisphenol A is toxic at relatively low concentrations and thus is highly toxic to aquatic organisms. EPA believes that the evidence is sufficient to list tetrabromobisphenol A on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity information for this chemical.

7. *Vanadium (CAS No. 7440–62–2) and Vanadium Compounds (Ref. 2).* Vanadium is currently listed under

section 313 with the qualifier (fume or dust). EPA is proposing to remove the fume or dust qualifier for vanadium and to add a vanadium compounds category. Therefore, EPA is presenting the following information as the basis for determining that vanadium other than fume or dust forms and vanadium compounds meet the section 313(d)(2) criteria for listing chemicals.

a. *Algae.* Vanadium has been shown to have toxic effects in algae. One study found that growth of *Chlorella* decreased at vanadium concentrations as low as 100 parts per billion (ppb), and at 50 to 1,000 ppm production was lowered by 25 to 34% compared to the controls. Different results were obtained in a second study where, for *Chlorella*, the maximum stimulatory effects on biomass production and chlorophyll synthesis were found at 500 ppb vanadium in the medium. Inhibitory effects on dry weight and chlorophyll content were found at concentrations of approximately 25 ppm vanadium, and growth was found to cease at 100 ppm vanadium. The toxic threshold for vanadium content in the algae was determined to be 150 to 200 nanograms per gram (ng/g) dry weight. Another study found the growth of the dinoflagellate *Ceratium hirundinella* to be inhibited by 0.1 ppm vanadium. In marine studies, acute toxicity tests on *Dunaliella marina*, *Proocentrum micans*, and *Asterionella japonica* with sodium metavanadate produced 9-day LC_{50} values of 0.5 ppm, 3 ppm, and 2 ppm respectively.

Vanadium appears to influence cell division processes in algae. It has been reported that 3 ppb vanadium as sodium vanadate prevented complete synchronization of *Bumilleriopsis filiformis*. In another study it was found that, in the range of vanadium concentration known to stimulate *Chlorella pyrenoidosa*, toxic effects on cell division were apparent. In continuous light, in the presence of 20 ppb vanadium as NH_4VO_3, mean cell size increased significantly, with maximal increase occurring at 0.5 ppm vanadium. These large cells had giant nuclei with multiple chromosomes. In addition, synchronous growth of the algae with vanadium ceased after three division periods, after which a division occurred, which generally produced larger than normal autospores. It was postulated that during growth, normal duplication of genetic material occurred, producing nuclei with multiple sets of chromosomes. However, subsequent nuclear division was inhibited by vanadium and the subsequent division of autospores did not occur, producing giant cells with large nuclei. In another study it was observed that ultrastructural changes in enlarged cells of *Scenedesumus obliquus* induced by growth at elevated concentrations of vanadium (0.8 to 9 ppm), included thickened cell walls, and larger numbers of vacuoles, starch granules, and lipid droplets.

One study has reported that the 15–day LC_{50} for an estuarine and salt-water green alga (*Dunaliella marina*) is 0.5 mg/L of sodium metavanadate and that the 15–day LC_{50} for a salt-water pennote diatom (*Asterionella japonica*) is 2 mg/L.

b. *Invertebrates.* Vanadium is commonly found in trace amounts in shell fish and crustaceans. The uptake of vanadium in molluscs, crustaceans, and echinoderms indicated that besides the food pathway, direct surface sorption processes are of major importance in the bioaccumulation of the metal. However, very few vanadium toxicity tests have been conducted with invertebrates. Reported toxicity values include 9-day LC_{50} values for *Nereis diversicolor* (worm), *Mytilus galloprovincialis* (mussel), and *Carcinus maenas* (crab) of 10, 35, and 65 ppm vanadium (as $NaVO_3$ in the seawater) respectively. These moderately high values are supported by another report that found that the critical concentration for vanadium in *Mytilus edulis* was between 50 and 100 ppm.

In a study of the toxicity of the heavy metals selenium, zirconium, and vanadium on the freshwater ciliated protozoan *Tetrahymena pyriformis*, the addition of 20 ppm vanadium as vanadyl sulfate significantly lowered the growth and locomotor rate (measured as swimming speed) of the organism. In another study, a median survival time (MST) of 8 hours was reported for *Daphnia magna* in media containing 30 ppm vanadium added as vanadate.

c. *Vertebrates.* Studies with American flagfish (*Jordanella floridae*) indicated a 96–hour LC_{50} of 11.2 ppm vanadium. Growth and survival in a 96–hour test was depressed, particularly in the larvae, at 0.17 ppm vanadium. At a concentration of 0.041 ppm there was stimulation of growth and reproductive performance in female fish. The sublethal threshold for toxicity of vanadium was estimated to be 0.08 ppm.

Studies have reported that vanadium is moderately toxic to juvenile rainbow trout (*Salmo gairdneri*) and whitefish (*Coregonus clupeaformis*) with 96–hour LC_{50} values of 6.4 and 17.4 ppm respectively, with toxicity increasing slightly with decreasing pH. Pronounced histopathological lesions were observed in gills and kidneys of trout exposed to sublethal concentrations of vanadium, with damage increasing with increased exposure to the metal. Vanadium induced premature hatching of eyed eggs at concentrations from 44 to 595 ppm. Curiously, eyed eggs of trout were 200 to 300 times more resistant to vanadium than fingerlings, and the metal did not appear to induce histopathological lesions in the developing embryos. It appeared that juvenile whitefish avoided vanadium concentrations of 500 ppm or higher in the test water.

It has also been reported that vanadium causes dose-related histopathological effects on the lamellae of gills in juvenile rainbow trout, suggesting that the gills are a critical site for the lethal action of vanadium. Of the three toxic materials tested (vanadium, nickel, and phenol), vanadium was that most potent lethal agent with a 96–hour LC_{50} of 10 ppm vanadium.

It has been reported that for vanadium the 7-day LC_{50} values for trout are within a narrow range, from 1.9 to 6.0 ppm vanadium, added as V_2O_2. Toxicity decreased with increasing water hardness, and was greater at pH 7.7, where H_2VO_4 was predicted to be the predominant vanadium ion. A second study reported the effects of vanadium on two life stages of brook trout, *Salvelinus fontinalis*, observing that the alevins of the fish were less sensitive to vanadium that were yearlings, the 96–hour LC_{50} being 24 and 7 mg/L respectively. Another study reported a 96–hour LC_{50} of 0.62 ppm for *Therapon jarbua* with vanadium presented as V_2O_5.

The rainbow trout (*Salmo gairdneri*) is one of the most commonly used fish for toxicity studies; for this species the LC_{50} value for vanadium was reported to be 5.6 mg/L. Increasing the exposure time resulted in progressively lower LC_{50} values, the lowest being 1.99 mg/L for an 11–day exposure period. Similar results have been reported where the LC_{50} values decreased from 4.34 mg/L for 5 days exposure to 1.95 mg/L for 14 days. Neither of these groups was able to define a minimum lethal level for rainbow trout. Other studies indicated that small rainbow trout are more resistant than larger fish to vanadium pentoxide. In general rainbow trout eggs were 10 to 15 times more resistant to pentavalent vanadium than fingerlings.

Some of the aquatic toxicity data discussed above are at relatively low concentrations indicating that vanadium is highly toxic to certain aquatic organisms. In addition, considering

vanadium's persistence and bioaccumulation potential (discussed in Unit V.C.1. of this preamble), EPA also believes that vanadium is highly toxic to aquatic organisms at the higher concentrations. EPA believes that the evidence is sufficient to list vanadium and vanadium compounds on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity information for vanadium and vanadium compounds.

It has been suggested that the bioaccumulation data for vanadium are insufficient to support the designation of vanadium as bioaccumulative based on the criteria proposed in this rulemaking. As such, while EPA is proposing to add vanadium compounds and all forms of vanadium to EPCRA section 313, the Agency is not proposing to revise the reporting thresholds for vanadium or vanadium compounds at this time. EPA requests comment on the sufficiency of the bioaccumulation data for vanadium.

EPA requests comment on its proposal to require reporting on the chemicals listed above under EPCRA section 313 and on the data supporting the proposed listings.

V. Persistence and Bioaccumulation: Criteria, Data Evaluation Methods, and Technical Review of Chemicals

This is EPA's first effort under section 313 to review chemicals for their persistence and bioaccumulation properties and it is limited to a relatively small group of chemicals. EPA may review additional chemicals in the future to determine if they should be considered persistent and bioaccumulative under section 313 and, if not already on the section 313 list, whether they should be added. In pursuing this action, EPA first established criteria that should be used under section 313 for determining if a chemical persists or bioaccumulates in the environment. The criteria were then applied to determine whether the chemicals included in this review can reasonably be anticipated to persist and bioaccumulate in the environment. The chemicals initially reviewed were drawn from two lists of persistent and bioaccumulative chemicals, including the Binational Level 1 list (Ref. 1) and chemicals that received high scores for persistence and bioaccumulation in the initial version of the Waste Minimization Prioritization Tool (WMPT) developed by EPA's Office of Solid Waste were also considered (Ref. 3). The chemicals on these lists were reviewed as part of the screening process which is not part of this rulemaking. Finally, included in this initial review were the chemicals included in the dioxin and dioxin-like compounds category that EPA has proposed for addition to the section 313 list (62 FR 24887, May 7, 1997) (FRL–5590–1). This proposed rule only presents the data for those chemicals for which assessments have been completed under the initial review; it does not eliminate any chemical from possible future designation as persistent or bioaccumulative or from future consideration for lower reporting thresholds for purposes of reporting under section 313. Any future lowering of the reporting thresholds for PBT chemicals will be done through rulemaking.

A. Persistence

A chemical's persistence refers to the length of time the chemical can exist in the environment before being destroyed (i.e., transformed) by natural processes. The environmental media for which persistence is measured or estimated include air, water, soil, and sediment with water being the medium for which persistence values are most frequently available. It is important to distinguish between persistence in a single medium (air, water, soil, or sediment) and overall environmental persistence. Persistence in an individual medium is controlled by transport of the chemical to other media, as well as transformation to other chemical species. Persistence in the environment as a whole is a distinct concept. It is based on the observations that the environment behaves as a set of interconnected media, and that a chemical substance released to the environment will become distributed in these media in accordance with the chemical's intrinsic (physical/chemical) properties and reactivity. For overall persistence, only irreversible transformation contributes to net loss of a chemical substance. This unit discusses those aspects of persistence that are important to consider in determining a chemical's persistence in the environment and sets forth the criteria that EPA used for determining that a chemical is persistent for purposes of reporting under section 313.

1. *Measurement of persistence in individual media.* A common measure of persistence in individual environmental media is a chemical's half-life, or the amount of time necessary for half of the chemical present to be eliminated from the medium. Thus, after one half-life, one half of the original amount of the chemical remains, after two half-lives one quarter of the original amount remains, after three half-lives one eighth remains, and so on. If other potentially confounding factors are ruled out, measured half-lives will normally reflect the rate(s) of one or more transformation processes. Confounding factors include, for example, transport of the substance to another medium; sorption, complexation or sequestration; and reversible changes in speciation. Transformation may occur by a variety of processes. In air, for chemicals in the gas phase, the most important process contributing to their destruction is oxidation by photochemically generated hydroxyl radicals (Ref. 4). However, photolysis and oxidation by ozone and nitrate radicals are also important transformation processes for some chemicals. In water, soil, and sediment the chief process resulting in net loss for most chemical substances is microbial degradation (i.e., biodegradation), but hydrolysis, direct and indirect photolysis and abiotic oxidation/reduction reactions may also play a role. Whether a given measured half-life reflects only one of these processes or more than one depends on the molecular structure of the chemical in question, and on the experimental design. The experiment may be designed to measure a net (overall) half-life for the medium of interest, or it may be designed to focus on a specific transformation process.

In the environment, degradation half-lives for chemical substances depend not only on chemical properties and structure, but also on characteristics of the surrounding environment. There are many environmental factors that can affect a substance's half-life, including, for example, temperature, pH, sunlight intensity, hydroxyl radical concentration, and the activity of the microbial community. As a result, there is substantial variability in environmental half-lives in both space and time, and this variability is reflected in the available literature data.

Variability in persistence data can be illustrated by means of examples. Webster et al. (Ref. 5) discuss the atmospheric oxidation of 2,2′,4,4′-tetrachlorobiphenyl, which reacts with hydroxyl radicals in a reaction that is dependent upon temperature and hydroxyl radical concentration (Ref. 6). Based on measured radical concentrations (Ref. 7), they estimated that in mid-latitudes in July at 15 °C the half-life is approximately 2 weeks, whereas in January at -5 °C it increases to 6 months at the same location. Even greater differences are expected when comparing polar and tropical latitudes. A second example is the hydrolysis of lindane (Ref. 5). Based on reliable measured data, the half-life for hydrolysis in ocean water at pH 8.1

varies from greater than 100 years at 0 °C to 75 days at 30 °C (Ref. 8). Finally, Vink and Zee (Ref. 9) measured rates of transformation of several pesticides in surface waters of The Netherlands and found large variations in half-lives. Half-lives ranged from 70 to 173 days for aldicarb, 1 to 139 days for simazine, 2 to 347 days for methoxone (MCPA), and 3 to 1,400 days for mecoprop. In this example, further analysis showed that much of the variability could be attributed to environmental factors that either directly or indirectly affect microbial activity.

Variability in rates of biodegradation is especially important because this is the dominant transformation process in soil and water/sediment for the majority of organic chemicals. This variability tends to be less predictable than the variability in abiotic transformation processes such as atmospheric oxidation and hydrolysis. The first two examples above demonstrate the dependence of half-lives for hydroxyl radical oxidation in the atmosphere and hydrolysis in water on measurable environmental parameters (i.e., temperature, hydroxyl radical concentration, and pH). However, even when these variables are controlled, measured rate constants can easily vary by an order of magnitude and this is reflected in literature data (e.g., Refs. 8 and 10).

2. *Data evaluation methods for persistence in each environmental medium.* The ideal situation in which to evaluate persistence would be one in which sufficient data are available for a chemical substance of interest, from studies using environmentally relevant protocols, to fully characterize the distribution of its half-lives. To ''fully characterize'' the distribution means to collect enough data to allow calculation of a mean and standard deviation of half-lives for each substance and environmental medium. Field studies, such as are often conducted to determine pesticide fate in the environment, are generally considered the most informative studies if properly conducted. The problem is that persistence is difficult to study in the field due to the high expense typical of these studies, the unpredictability of weather, and so on. Moreover, it is often difficult or impossible to determine a meaningful half-life for transformation due to an inability to eliminate or adjust for transport of the test substance out of the medium of interest. The ideal situation is rarely if ever achieved, and even with relatively well-tested chemicals it is necessary to use laboratory data and, often, estimates of half-lives.

In both laboratory studies and estimation methods, it is common to focus on specific transformation processes. Thus, for example, a common technique is to study biodegradability by collecting a ''grab sample'' of soil or natural water/sediment, transporting the sample to the laboratory, spiking the sample with the chemical of interest, and measuring the chemical's disappearance over time while running controls to rule out contribution of other fate processes. EPA believes it is appropriate to use grab sample studies in addition to field studies. Where experimental conditions can be optimized to mimic those in the field and the balance and interactions between microbial species in the sample can be preserved, the results of grab sample biodegradation studies are expected to be sufficiently representative of field results to allow general characterization of biodegradative persistence in environments similar to those from which the grab sample was collected.

In view of these limitations on existing persistence data, to determine a chemical's persistence for purposes of section 313 reporting, EPA adopted an approach to data selection and review that emphasizes experimental data but utilizes both laboratory and field data, as well as estimated half-lives in certain situations. Although there are certain limitations to existing persistence data, EPA believes that for the chemicals included in this proposed rule the available data are sufficient to make a reasonable determination regarding their environmental persistence.

a. *Air.* For air, the rate constant for the reaction of hydroxyl radicals in the vapor phase with the chemical of interest, whether experimentally determined or estimated, was usually the only information available. Very few experimental data were available for the chemicals included in this proposed rule, and EPA therefore used the Atmospheric Oxidation Program (AOP) (Ref. 11), which is based on the estimation method of Kwok and Atkinson (Ref. 12), to estimate rate constants for this process. Half-lives for air were then calculated using default hydroxyl radical concentrations based on published monitoring data for relatively pristine (3×10^5 radicals per cubic centimeter (cm^3)) and polluted (3×10^6 radicals/cm^3) air. In many cases the chemical of interest is expected to exist partially or mainly in the particulate phase. Because half-lives for the particulate phase are likely to be higher, where data on particulate phase half-lives were available they were given greater weight in judging overall half-life in air than data on gas-phase hydroxyl radical reaction. Data from studies in which emissions from wood smoke had been exposed to sunlight were available for several PACs and thus they were given greater weight in judging overall half-life in air for these compounds. Photolysis may also be an important transformation process in air, and half-lives for photolysis were used in the evaluation of overall atmospheric half-life if experimental data were available and indicated that the process was significant at light wavelengths in the visible range (greater than 290 nanometers (nm)).

As indicated above, because of insufficient experimental data EPA used the estimation method of Kwok and Atkinson (Ref. 12) to calculate rate constants for hydroxyl radical oxidation in the vapor phase in the atmosphere, and these data provided the basis for air half-lives for most of the chemicals included in this proposed rule. The Atkinson methodology, as embodied in the Atmospheric Oxidation Program (AOP) (Ref. 11), is generally accepted as the method of choice for estimation of atmospheric oxidation potential and is currently in use worldwide.

b. *Water, sediment, and soil.* For the surface water/sediment compartment, biodegradation is the dominant transformation process for most of the chemicals included in this proposed rule. Therefore, biodegradation data from field or grab sample studies were most often used as the basis for overall half-lives for this environmental compartment. Field studies were preferred, but if only grab sample studies were available the half-life for this compartment was expressed as a range of values. Data from longer term laboratory studies were preferred over other data. Although laboratory-determined half-lives for direct or indirect photolysis (when this process was important and data were available) were almost always lower, the data were not used to determine half-lives for the medium unless from aquatic simulation tests. The rationale is that most of the chemicals included in this proposed rule are expected to sorb strongly to particulate and suspended material in water, and be removed from the surface layers where sunlight penetration is most significant. Hydrolysis data were considered in the determination of overall water/sediment half-life for chemicals with hydrolyzable functional groups if data were available.

Evaluation of half-life data for the soil compartment was similar to that for the water/sediment compartment. As with water/sediment, if only grab sample studies were available, the half-life for

the compartment was expressed as a range of values, but here the possibility of photolysis on the soil surface was noted. Field study data were not qualified in this manner because it was assumed that study plots had been exposed to all relevant transformation processes simultaneously. Photolysis was not considered quantitatively when soil half-lives were based on grab sample data because of the inherent limitations of available photolysis data. Most such available data are for photolysis in water, organic solvents, or water/solvent mixtures, but photolysis rates under these conditions are rarely similar to those for the same chemical sorbed to soil.

As noted above only biodegradation data from field or grab sample studies were used in the determination of overall half-lives for water/sediment and soil. No data from microbial pure culture screening (e.g., Ready Biodegradability tests) or biotreatment studies were used in the evaluation because these types of studies cannot be used to derive environmentally relevant biodegradation half-lives since the environment is much more complex than a microbial pure culture. Data (biodegradation or other) on persistence in benthic sediments were generally not available for the chemicals included in this proposed rule. Data were available for some polychlorinated biphenyls (PCBs); however, and such data were considered in the determination of overall water/sediment half-life for PCBs.

3. *Standards for acceptability of persistence data*. The standards listed below were applied in determining the acceptability of data for soil and water/sediment. At a minimum, studies needed to have information on the following parameters:

- Identity of the tested chemical.
- Study type: grab sample (and what medium the sample came from, i.e., water; soil; sediment; some combination thereof) or field test.
- Degradation rate; or data in table or figure for degradation versus time, from which a rate could be calculated; or rate data already expressed as a half-life or rate constant.
- Analytical method used to measure degradation.
- Initial concentration (dosing) of tested chemical.

Although a lack of the types of information listed below was not necessarily grounds for rejection, a study was considered more valuable if information was given on:

- Purity of the tested chemical.
- Temperature of incubation (or field temperature in the case of field studies).
- Location and characteristics (especially, likelihood of prior contamination and thus development of an acclimated microbial population) of field sites or sites from which grab samples were collected, as appropriate.
- Mass balance obtained with respect to starting level of the test chemical.
- Degree of replication of test vessels, field plots, etc.
- Use of appropriate controls, especially sterile controls to account for any abiotic loss of the tested chemical.

For field and grab sample studies it was important, for interpretation of results in relation to the overall transformation half-life, that processes leading to transport of the chemical out of the medium of interest be ruled out. Which processes were of importance was not always easy to ascertain or predict, but usually this could be done to a first approximation. With respect to field tests especially, but also grab sample tests, special attention was given to the possibility of volatilization (e.g., removal of the volatilized chemical could falsely be attributed to transformation) and sorption.

The following factors were generally considered grounds for rejection of biodegradation studies (Ref. 13). They do not necessarily apply to other types of studies.

- Less than 10% of the tested chemical initially present was lost in the study.
- Degradation rate was determined from a curve for which the r^2 value was low (generally, 0.5 or lower).
- There was reason to believe that abiotic reactions may have contributed to the observed rate of degradation, but there was no sterile control (not applicable to field studies).
- Incubation temperature was less than 10 °C, or was otherwise ''extreme'' (not applicable to field studies).
- Grab samples, if applicable, were held in laboratory storage for an excessive period of time prior to test initiation (generally, greater than several days).
- Initial test chemical concentration was high enough to lead to the possibility that toxicity to the microbial population accounted wholly or partially for low observed degradability (if applicable); generally, levels of the tested chemical greater than 500 mg/L for water and greater than 1,000 mg/L for soil were grounds for suspicion.

For many of the chemicals included in this proposed rule, biodegradation was judged to be the critical process controlling overall persistence in soil or water, but data were available for one or the other but not both media. Under these circumstances EPA assumed that half-lives for biodegradation are roughly comparable in the two compartments. This assumption is based on independently derived but consistent results reported by Boethling, et al. (Ref. 13) and Federle, et al. (Ref. 14). In the first study (Ref. 13), measured half-lives from existing literature data were collected for a wide variety of organic chemicals whose biodegradability had been tested using both soil and water/sediment grab samples (but not necessarily in the same study or by the same investigator). Mean ratios of half-life in water to half-life in surface soil were then calculated for the 20 study chemicals. These ratios varied widely but their overall mean was approximately one. Therefore, it is reasonable to assume that biodegradation in aerobic surface waters is about as fast as biodegradation in soil. Federle et al. (Ref. 14) compared biodegradation rates under various conditions in much the same fashion, but they utilized experimental data generated *de novo* in carefully controlled laboratory tests. Scaling factors (ratios of half-lives) for river water versus soil varied widely as observed in the first study (Ref. 13), but the overall mean was again approximately one.

EPA requests comment on its methodology for determining persistence in the absence of chemical-specific data.

4. *Numerical criteria for persistence in each environmental medium*. Numerous organizations and internationally negotiated agreements have set numerical criteria for environmental persistence, many of which have been developed through consensus processes (Ref. 15). A half-life in water of greater than 4 days is used by EPA's Office of Pesticide Programs (OPP) to trigger bioaccumulation testing of pesticides in fish (Ref. 16). Under the Clean Air Act Amendments of 1990 a list of chemicals of priority concern was developed using a half-life in surface waters of greater that 15 days (Ref. 17). A half-life of 30 days for surface waters was used to identify persistent chemicals on the Toxic Substances Control Act Chemical Substances Inventory (Ref. 18). A number of Canadian projects, many dealing with the Great Lakes basin, have developed lists of chemicals for various actions using a half-life in water criterion of greater than 50 or 56 days with some of the projects also using a sediment half-life criterion of 50 or 56 days or in some cases 180 days (Ref. 15). Another Canadian project, the Canadian Toxic Substances Management Policy (TSMP), used less conservative half-life

values of 6 months in water and 2 years in sediment with an air half-life of 5 days (Ref. 19). Under the North American Free Trade Agreement Commission for Environmental Cooperation (NAFTA-CEC), final screening criteria are under review that use half-life persistence criteria of greater than 6 months for water, 6 months for soil, 12 months for sediment, and 2 days for air (Ref. 20 and 21). Half-life criteria established for persistent chemicals under the United Nations Economic Commission for Europe, Convention on Long-Range Transboundary Air Pollution (UNECE-LRTAP) Protocol on POPs are 2 months for water, 6 months for soil, 6 months for sediment, and 2 days for air (Ref. 20 and 22). In negotiation of the LRTAP POPs Protocol, Germany proposed somewhat more conservative half-life values of 2 months for water, soil, and sediment and 2 days for air (Ref. 20 and 22). The Chemical Manufactures Association (CMA) in its policy for identifying PBT chemicals (Ref. 23) and the International Council of Chemical Associations (ICCA) criteria for identifying persistent organic pollutants (POPs) (Ref. 24) have both used half-life criteria of 180 days for surface water, 360 days for soil, and 5 days for air. In addition, in preparations for scheduled negotiations for the United Nations Environment Program (UNEP) Global Negotiations on POPs an analysis was prepared that discusses international criteria for chemical persistence (Ref. 20).

The above criteria for persistence in water, soil, and sediment tend to cluster around two half-lives, 1 to 2 months and 6 months. A persistence half-life criterion of 6 months seems adequate to ensure that chemicals acknowledged by many groups to be the most persistent are captured, for example the chemicals on the Binational Level 1 list or the chemicals under consideration in the UNEP global POPs negotiations (Ref. 20). But it may be inadequate to capture other chemicals that persist long enough to bioaccumulate to toxic levels. Any chemical exhibiting such properties would be missed by a 6–month criterion.

A 2–month half-life criterion for persistence in water would be consistent with many of the criteria discussed above. In addition, 2 months represents the approximate duration of standard aquatic bioconcentration and chronic toxicity tests, and is therefore thought to be adequate for detecting most long-term toxic effects as well as any tendency for a chemical to accumulate in fatty tissue of aquatic organisms. For example, among current, internationally harmonized Office of Prevention, Pesticides and Toxic Substances (OPPTS) test guidelines in the 850 series are methods for fish (Ref. 25) and oyster (Ref. 26) bioconcentration factors (BCF), for which maximum recommended test durations are 28 to 60 and 28 days, respectively. Test guidelines for ecotoxicity include methods for daphnid chronic toxicity (Ref. 27), mysid shrimp chronic toxicity (Ref. 28), fish early-life stage toxicity (Ref. 29), and tadpole sediment subchronic toxicity (Ref. 30), for which the recommended maximum test durations are 21 days, 28 days, up to 60 days post-hatch, and 30 days, respectively. Sixty days is also sufficient to encompass nearly all bioconcentration data in the Japanese Chemicals Inspection and Testing Institute (CITI) data base (Ref. 31), which contains data from carp bioconcentration tests, mostly of 42 or 56 days' duration, for more than 400 chemicals tested under the Chemical Substances Control Law (CSCL) of Japan. Further, most reliable fish bioconcentration data in EPA's AQUIRE data base (Ref. 32) are from 32–day tests or other tests of comparable duration. Based on the available information, EPA believes the use of a 2–month half-life criterion for persistence in water would be an appropriate criterion to use for determining whether a chemical is persistent in water for purposes of section 313.

As with water, the various groups discussed above have set persistence criteria for soil and sediment that range from 2 to 12 months. As discussed under section A.3. of this unit, two separate studies (Refs. 13 and 14) have suggested that biodegradation in aerobic surface water can be assumed to be about as fast as biodegradation in soil. Therefore, it is appropriate to set the half-life criterion for soil at the same value as for water; i.e., 2 months. Similar considerations apply to the selection of a sediment persistence criterion. Very few data on persistence of chemicals in benthic sediments are available. Deeper layers of aquatic sediment are surely anaerobic, and this is especially likely if the levels of organic matter are high. Boethling et al. (Ref. 13) found that anaerobic biodegradation in flooded soil was on average 3 to 4 times slower than aerobic degradation in surface soil. But surficial sediments are likely to be aerobic and for this situation it is logical to use the same half-life as for the overlying water (i.e., 2 months). In actuality, the precise point in depth at which sediments become anaerobic varies from site to site and is not predictable. Therefore, EPA believes that it is appropriate to use the water criterion for both water and sediment.

The persistence criteria for air selected or proposed by the organizations discussed above are either 2 or 5 days (Ref. 33). As part of the analysis of the UNEP Global Negotiations on POPs (Ref. 20) both theoretical and empirical arguments were presented that support a half-life criterion of 2 days for air. The analysis suggested that the air persistence criterion mainly pertains to the ability of a chemical to persist in air for a sufficient amount of time to be transported to remote regions. For long range transport corresponding to transoceanic or transcontinental distances (i.e., 2,500 miles) to occur, a chemical needs to persist in the air between 7 and 10 days. For a 2–day half-life a significant amount (1/16) of a chemical initially released to air will remain after 8 days. The analysis also concluded that for the chemicals on the initial UNEP list of 12 POPs, all exceeded or were close to the 2–day half-life criterion for air.

The 5–day half-life air criterion proposed by some groups would be sufficient for only 2 half-lives at best to occur in a 10–day transit time. This implies that concern for long-range transport in air should only exist if at least ¼ of the original amount of a chemical released remains after long range transport. However, depending on the quantity of the chemical originally released, amounts below ¼ of that originally released may still be of toxicological significance, especially for chemicals that persist and bioaccumulate. Moreover, even greater amounts of a chemical may be deposited closer to the original source and in much less time than it takes for long range transport. Thus, under a 2–day half-life criterion the amount of an airborne chemical that is available to be deposited at shorter distances can be significant. For example, after 4 days the amount of a chemical with a 2–day half-life in air that will remain available for deposition is ¼ of the original amount released and the amount deposited for a 5–day half-life would be even greater. It has been noted (Ref. 34) that not all chemicals that have been identified as of concern for persistence and bioaccumulation are long-range pollutants, with some POPs with certain properties tending to undergo rapid deposition close to their sources rather than more widespread distribution. This is especially relevant to reporting under section 313 which seeks (among other things) to provide information

concerning chemicals present in local communities. These considerations suggest that the 5–day air criterion is not sufficiently inclusive.

For the purposes of determining whether a toxic chemical is persistent in the environment under section 313, EPA used a half-life criterion of 2 months for water/sediment and soil and a half-life of 2 days for air. Given the above discussions, EPA believes that, for purposes of reporting under section 313, these values are appropriate for determining whether a toxic chemical is persistent in the environment and will persist long enough in the environment to bioaccumulate or be transported to remote locations. Under these criteria, if a toxic chemical meets any one of the media specific criteria, then it is considered to be persistent. Thus if a toxic chemical's half-life in water or sediment or soil is equal to or greater than 2 months or greater than 2 days for air then the toxic chemical is considered to be persistent for purposes of section 313. Note that when considering persistence in connection with the potential for a toxic chemical to bioaccumulate, meeting the air half-life criteria alone would not be sufficient, since a chemical's potential to bioaccumulate is usually dependent on it being persistent in either water, sediment, or soil. In determining whether the chemicals in this proposal were persistent, EPA did not rely solely on the persistence in air.

EPA solicits comment on the use of the 2 month criterion in this rulemaking.

5. *Persistence in the multimedia environment.* The environment may be viewed as a set of interconnected media: air, water, sediment, and soil. When a chemical substance is introduced into the environment it becomes distributed among the individual media according to its chemical properties and reactivity, and characteristics of the environment. For example, a chemical released to air may degrade quickly by any of several transformation processes, or it may be deposited on soil, vegetation or surface water, depending on its volatility, tendency to sorb to particulate matter in the atmosphere, prevailing rates of precipitation and particle deposition, and so on. Likewise, a chemical released to surface waters or soils may degrade quickly, or it may volatilize or, in the case of soil, migrate through surface layers and eventually reach ground water. All intermediate forms of chemical distribution behavior are also possible.

In a closed system, thermodynamics determine the distribution of a chemical at equilibrium, absent irreversible transformation of the chemical. Under these conditions the chemical's volatility, as reflected by its Henry's Law constant, and its hydrophobicity, as reflected by its n-octanol/water partition coefficient, are the primary determinants of the final distribution. The tendency to move from one medium to another in response to thermodynamic forces is referred to as partitioning. Partitioning may have a marked effect on the overall persistence of a chemical in the multimedia environment. A chemical may have a relatively long half-life in one medium, but, even if released directly to that medium, may rapidly partition to another where its degradation rate is different. For example, if a volatile chemical that is relatively persistent (i.e., has a long half-life) in water and soil but is rapidly oxidized in the atmosphere is released to water or soil, the chemical's persistence in the receiving medium will be relatively unimportant, as it will quickly volatilize, then degrade in air. The overall persistence of the chemical will be much lower than predicted from transformation half-lives for soil and water alone.

The way in which a chemical enters the environment is also an important consideration. Using the example above, a volatile chemical that is emitted to soil or water will have a different and higher overall persistence than if the same substance is emitted directly to air. This is because the process of moving from one environmental medium to another--called intermedia transport--is time dependent. Intermedia transport is complex and a full characterization includes a suite of mass transfer coefficients, rain rates, and rates of aerosol and dry deposition, sediment deposition and resuspension, and soil water and solids runoff (Ref. 35).

Multimedia mass balance models offer the most convenient means to estimate overall environmental persistence from information on sources and loadings, chemical properties and transformation processes, and intermedia partitioning. For the chemicals included in this proposed rule EPA used an approach based on the EQC model (Ref. 35) to estimate overall environmental persistence. Overall persistence estimated in this way is used as an additional factor, in conjunction with reaction half-lives for individual media, bioaccumulation/bioconcentration factors, etc., in justifying actions proposed in this rule.

The EQC model is based on the fugacity approach first delineated by Mackay (Ref. 36) and subsequently applied to numerous environmental processes (Ref. 37). It uses an ''evaluative environment'' in which environmental parameters such as bulk compartment dimensions and volumes (e.g., total area, volume of soil and sediment, etc.) are standardized, so that overall persistence for chemicals with different properties and rates of transformation may be compared on an equal basis (Ref. 38). EPA used a version of the EQC level III model (Ref. 35) which was modified to focus on net losses by deleting model terms for advective losses (movement out of the evaluative environment of air and water potentially containing a chemical) and sediment burial (Ref. 5). In this version of the model only irreversible transformation contributes to net loss of a chemical.

The overall persistence obtained from this model is calculated as the total amount in the evaluative environment when steady state is achieved, divided by the total loss rate. The results thus obtained are neither an overall environmental half-life nor a compartment (or transformation)-specific half-life; rather they are equivalent to an environmental residence time. When only irreversible transformation contributes to net loss--i.e., under the conditions of this version of the EQC model--overall environmental persistence times can be converted to half-lives by multiplying the former by ln 2 (i.e., 0.693). The overall half-life calculated in this way is for dissipation in the environment as a whole and cannot be related directly to any individual compartment. EPA has performed this calculation and the results are discussed in Unit V.C.3. of this preamble.

In this analysis EPA used the highest, lowest, and mean values for the ranges of half-lives identified as described above, as inputs to the model. In addition to reaction half-lives for air, water, and soil, the EQC model requires half-lives for the sediment compartment. Measured values were used where available, but since there were few such data, where biodegradation was the rate-determining process, the half-life in the surface layer of sediments was assumed to be the same as that for aerobic biodegradation in the water column. The rationale is that sediment surface layers are likely to be aerobic, and therefore rates of biodegradation will be similar at the sediment-water interface and in the water column.

It has been proposed that reaction half-lives for input into multimedia mass balance models like the EQC model be expressed as lognormal distributions with defined standard

deviations, the standard deviation being derived by assigning default values if adequate experimental data are unavailable (Ref. 5). Overall environmental persistence can then be expressed as a distribution and a sensitivity analysis can be conducted to identify which reaction half-lives are most critical in determining overall persistence. Another result of the sensitivity analysis may be to show that one or more compartmental half-lives can be assumed to be infinite without having a marked effect on the overall environmental persistence.

While meeting any one of the medium-specific criteria for persistence in water, soil, or sediment is sufficient to classify a toxic chemical as persistent for purposes of section 313, EPA also considers the results of multimedia modeling. If the results of multimedia modeling indicate that a toxic chemical does not meet the persistence criteria then, EPA may exclude that chemical from further consideration as persistent. The use of multimedia modeling results to override the medium-specific persistence data will only be considered if all model inputs are judged to be accurate. For example, if the multimedia modeling results are being driven by a chemical's half-life in air but that half-life is not considered to be very reliable, then EPA does not believe that the multimedia modeling should override the medium-specific criteria. EPA will make a case-by-case determination for any chemical that is not considered persistence on the basis of multimedia modeling.

EPA solicits comments on this overall approach to the use of multimedia modeling as discussed in this proposed rule, and on any actual or proposed modifications to the fate model described above.

B. Bioaccumulation

Bioaccumulation is a general term that is used to describe the process by which organisms may accumulate chemical substances in their bodies. The discussions and data on bioaccumulation in this proposed rule deal strictly with aquatic organisms because most of the bioaccumulation data are from aquatic studies. This is not to imply that bioaccumulation cannot occur in non-aqueous environments. The term bioaccumulation refers to uptake of chemicals by organisms both directly from water and through their diet (Ref. 39). EPA has defined bioaccumulation as the net accumulation of a substance by an organism as a result of uptake from all environmental sources (60 FR 15366). The nondietary accumulation of chemicals in aquatic organisms is referred to as bioconcentration, and may be described as the process through which a chemical is distributed between the organism and environment based on the chemical's properties, environmental conditions, and biological factors such as an organism's ability to metabolize the chemical (Ref. 40). EPA has defined bioconcentration as the net accumulation of a substance by an aquatic organism as a result of uptake directly from the ambient water through gill membranes or other external body surfaces (60 FR 15366). A chemical's potential to bioaccumulate can be quantified by measuring or predicting the chemical's bioaccumulation factor (BAF). EPA has defined the BAF as the ratio of a substance's concentration in tissue of an aquatic organism to its concentration in the ambient water, in situations where both the organism and its food are exposed and the ratio does not change substantially over time (60 FR 15366). A chemical's potential to bioaccumulate can also be quantified by measuring or predicting the chemical's bioconcentration factor (BCF). EPA has defined the BCF as the ratio of a substance's concentration in tissue of an aquatic organism to its concentration in the ambient water, in situations where the organism is exposed through water only and the ratio does not change substantially over time (60 FR 15366). This Unit discusses those aspects of determining bioaccumulation that are important to consider in assessing whether a particular chemical will bioaccumulate in the environment.

1. *Use of BAFs versus BCFs.* In general, because BAFs consider the uptake of chemicals from all routes of exposure they are considered better predictors of the accumulation of chemicals within fish than BCFs which only consider uptake of chemicals directly from water. EPA reached this same conclusion with regard to the use of BAFs in setting criteria for the protection of the Great Lakes. Specifically, EPA stated that BAFs were a better predictor of the concentration of a chemical within fish tissues in the Great Lakes System because they include consideration of the uptake of contaminants from all routes of exposure (60 FR 15366). However, considering all routes of exposure greatly complicates the analysis of bioaccumulation and the calculation of BAFs. Biomagnification and trophic transfer via the food chain must be considered in such determinations. Also, the percent lipid content of fish at certain trophic levels must be factored in or normalized for developing BAFs for non-polar chemicals (60 FR 15366). Thus, the BAF value for a chemical may be much higher than its BCF value when these other parameters are considered; the former is much more difficult to calculate and more assumptions must be made.

Measured BAFs are based on field measurements of concentrations of chemicals in various biota and water. Thus, BAFs will vary depending on where in the food chain one samples organisms for analyses. For example, a carp (an omnivore, lower in the food chain) will have a different BAF than a pike (a top predator, high in the food chain and at a high trophic level). BCFs and BAFs are not mutually exclusive of one another but can be related. A predicted BAF can be derived by multiplying a laboratory-derived BCF by a food-chain multiplier (FCM) (defined as the ratio of BAF to an appropriate BCF) or by multiplying an estimated BCF by a FCM value. BAFs predicted by using FCMs include many but not all of the environmental fate processes (for example, metabolism) and interactions that affect bioaccumulative chemicals. When these processes or interactions are significant, predicted BAFs will be larger than field-derived BAFs. Therefore, BAFs measured in the field are preferred. An additional complicating factor in determining BAFs is the interconnectivity of the water column and sediments in aquatic ecosystems. This means that chemical residues in fish can also be predicted via biota-sediment accumulation factors (BSAFs) which use the concentration of the chemical in sediment as a reference point (60 FR 153661).

Although BAFs can be measured or calculated, a BCF value is more commonly measured or predicted because such measurements do not require the consideration of the often complex issues of food and sediment exposure required for BAF determinations. EPA has been using BCF values as an indicator of bioaccumulation potential for industrial chemicals and pesticides for many years (Ref. 41). In addition, well-known and established test guidelines for determining BCF values exist (Refs. 25 and 26). These test guidelines suggest that only a limited number of aquatic species be tested, mainly fathead minnows and/or oysters and occasionally rainbow trout, which helps to reduce variability in test results. BCF values for many organic chemicals have been calculated using these test guidelines, particularly for some chemicals tested under TSCA section 4. In addition, equations for predicting

BCF values have been developed that correlate well with measured values (Refs. 40 and 42). The most recent of these equations was developed by comparing predictions with measured data for 694 chemicals and is believed to provide a significantly better fit to the existing measured data than other methods (Ref. 40). Due to the consideration of additional sources of exposure, BAF values are usually higher than BCF values, thus using a BCF value should not usually over-predict the potential for bioaccumulation in aquatic species.

The number of measured or predicted BAFs available is limited while measured BCFs exist for many chemicals and can be predicted rather easily. While BAFs may be better predictors of the concentration of a chemical in fish, in the absence of appropriately measured or predicted BAFs, a BCF value can be used as an indicator of a chemical's potential to bioaccumulate. For purposes of determining if a chemical is bioaccumulative under section 313 EPA will use BAF values when available and BCF values for toxic chemicals for which appropriately determined BAFs do not exist. EPA requests comment on this approach.

2. *Predicting BAFs and BCFs.* Appropriately measured BAF or BCF values are always the data of first choice, however these values are expensive to measure if done properly and thus are not as readily available as predicted values. In the absence of valid measured data, EPA believes that it is appropriate to use predicted BAF and BCF values since available prediction methods provide values that correlate well with measured data. EPA has published procedures for predicting BAFs (60 FR 15366). However, since BAFs require consideration of complex exposure paths, BCFs are the more commonly predicted indicator of a waterborne chemical's potential to bioconcentrate in aquatic organisms. BCF values are often predicted from a chemical's octanol/water partition coefficient (K_{ow}). A chemical's K_{ow} is a ratio of the chemical's concentration in the n-octanol phase to its concentration in the aqueous phase in an equilibrated two-phase n-octanol-water system. The information is usually reported as the common logarithm (base 10) of K_{ow}, log K_{ow}, rather than as K_{ow} itself. A chemical's log K_{ow} provides an indication of the chemical's ability to bioconcentrate based on the assumption that bioconcentration is a thermodynamically driven partitioning process between water and the lipid phase of the exposed organism, and therefore can be modeled using n-octanol as a surrogate for biological lipids. Thus, the relationship between log K_{ow} and BCF is valid only for chemicals that bioconcentrate in tissues containing lipids (Refs. 40 and 41). BCFs are usually predicted from regression equations of the general form: log BCF = a log K_{ow} + b where a and b empirically determined constants (Ref. 43). The equation, log BCF = 0.79 log K_{ow} -0.4, has been determined to provide a good correlation with measured BCF values (Ref. 42) and has been used by EPA for a number of years. In addition, the bilinear model method developed by Bintein, et al. (Ref. 44) provides a much better correlation with measured BCF values for chemicals with log K_{ow} values greater than 6. Recently a study was conducted that improved the correlation between prediction equations and measured BCF values (Ref. 40). The new equation, developed by comparing predictions with measured data on 694 chemicals, is log BCF = 0.77 log K_{ow} -0.7 + ΣFi, where Fi are correction factors for structural characteristics of the chemical in question (Ref. 40). This new equation is believed to provide an even better fit to the existing measured BCF data base.

EPA request comments on its methodology for predicting BCF values and on the use of predicted BCFs for quantifying the bioaccumulation of chemicals in this rulemaking when measured BCFs are not available.

3. *Standards for acceptability of measured BAF and BCF data.* Measured BAF or BCF values are the preferred source of bioaccumulation data if the values are from appropriately conducted studies. EPA has published procedural and quality assurance requirements for field-measured BAFs for the Final Water Quality Guidance for the Great Lakes System (56 FR 15366). While these requirements are specific to the Guidance for the Great Lakes System, they do provide a basis for some general factors to be considered when reviewing measured BAF data, for example:

- The trophic level of the fish species tested should be determined.
- For organic chemicals, the percent lipid should be either measured or reliably estimated for the tissue used in the determination of the BAF.
- The concentration of the chemical in the water should be measured in a way that can be related to particulate organic carbon (POC) and/or dissolved organic carbon (DOC) and should be relatively constant during the steady-state time period.
- For organic chemicals with log K_{ow} greater than four, the concentrations of POC and DOC in the ambient water should be either measured or reliably estimated.
- For inorganic and organic chemicals, BAFs should be used only if they are expressed on a wet weight basis; BAFs reported on a dry weight basis should not be converted to wet weight unless a conversion factor is measured or reliably estimated for the tissue used in the determination of the BAF.

EPA also used some general guidelines for selecting measured BCF values for this proposed rule. The goal was to limit the number of individual measured BCF values to be considered to 10 for any given chemical (where applicable), and to select a single recommended BCF from the available measured values for each chemical. The general guidelines used were:

- Data obtained by the kinetic method were preferred to data from the equilibrium method, especially for chemicals with high log K_{ow} values, which are less likely to have reached equilibrium in standard tests.
- For equilibrium-method studies a BCF value in the middle of the range of values with the longest exposure times was selected, especially for substances with high log K_{ow} values (for the same reason as noted above).
- Low exposure concentrations of the chemical were favored in order to minimize the potential for toxic effects and maximize the likelihood that the total concentration of the chemical in water was equivalent to the amount that was bioavailable.
- Data obtained under flow-through conditions were selected whenever possible.
- Data were rejected if significant contamination of the exposure medium by food, excreta, or other adsorbents was suspected, since this may reduce the bioavailability of the test chemical.
- Warm-water fish were preferred to cold-water fish since more data were available for warm-water species. EPA also considered whether the measured BCF values were from studies that were conducted in a manner consistent with the well-known and established test guidelines for determining BCF values (Refs. 25 and 26).

4. *Sources of BAF and BCF data for chemicals included in this proposed rule.* The data used to assess the bioaccumulative properties of the chemicals included in this proposed rule includes a mixture of both predicted and measured BAF and BCF values. Appropriately measured BAF and BCF values were used where available, but in the absence of appropriately measured values, predicted values were used. Measured

BCF values were identified mainly from a review of a data base of BCF values for 694 chemicals compiled by Syracuse Research Corporation (SRC) to support the development of an improved BCF prediction equation (Ref. 45). Other BCF values were predicted using the equation developed by Meylan, et al. (Ref. 40). Additional measured or predicted BCF values were obtained from previous chemical reviews, hazard assessments, TSCA section 4 activities, and other references. In addition, measured BAF values for certain chemicals were obtained from EPA's Great Lakes Water Quality Initiative Technical Support Document for the Procedure to Determine Bioaccumulation Factors (Ref. 46). The record for this proposed rule includes a document that explains the origin of the BAF or BCF value selected for the each PBT chemical (Ref. 47).

The measured BCF values contained in the data base developed by SRC were obtained primarily from the U.S. EPA's AQUIRE data base (Ref. 32); a large data base of BCF values collected by the Japanese Chemicals Inspection and Testing Institute (CITI) (Ref. 31); the National Library of Medicine's Hazardous Substances Data Bank (HSDB) (Ref. 48); and sources referenced in the Environmental Fate Data Base (EFDB) (Refs. 49 and 50). Most data were retrieved from AQUIRE (277 chemicals) and CITI (479 chemicals). Only fish BCF data were collected for the data base, which does not contain data for any other species. The record for each chemical contains up to 10 individual BCF measurements, and a single recommended value selected from the listed measurements which was chosen following EPA-approved selection criteria (Ref. 47). If available, data were also collected for each individual BCF value on fish species, concentration of test substance, percent lipid in test organism, test method (equilibrium or kinetic), and fish tissue on which measurements were based (whole body, fillet, or edible tissue). A separate field in each data base record contains the rationale for selection of the recommended BCF value. Printouts of the data base records for each PBT chemical whose BCF data came from this data base are included in the record for this proposed rule (Ref. 47).

5. *Numerical criteria for bioaccumulation.* EPA used a BAF/BCF numerical criterion of 1,000 for determining if a chemical is bioaccumulative for purposes of section 313. The initial basis for the consideration of a BCF value of approximately 1,000 as an indicator of high bioaccumulation potential is linked to information developed at a meeting sponsored by the American Society for Testing and Materials held in 1976 which was published in the open literature two years later (Ref. 51) and which was recently reaffirmed (Ref. 52). Additional support for the use of a numerical cut off of 1,000 for bioaccumulation has developed over a number of years. In chemical reviews conducted under TSCA, EPA uses BCF values of between 100 and 1,000 to indicate a medium concern for the potential bioaccumulation of a chemical and a BCF of 1,000 or more to denote a high concern (Refs. 53 and 54). EPA's Duluth Laboratory (Refs. 55 and 56) studied 83 chemicals, 59 of which had predicted BCF values of less than 188 (log K_{ow} less than 3.5). Of the 59 chemicals, none had predicted BCF values that were high enough to have demonstrable environmental effects. This indicated that bioconcentration testing should not be necessary for chemicals with predicted BCF values of less than 188 (Ref. 54). However, there were some chemicals whose BCF values were between 188 and 1,000 (log K_{ow} 3.5 to 4.35) that were found to bioconcentrate significantly (Ref. 55). Thus EPA established a BCF range of equal to or greater than 100 and less than 1,000 to indicate a medium concern for bioaccumulation and a BCF value of greater than 1,000 for a high concern. In addition, the usefulness of the BCF cut off value of 1,000 for high concern was affirmed in an EPA-sponsored workshop (the Testing Triggers Workshop) which was conducted in 1982 (Ref. 57). Furthermore, a BCF value of 1,000 has been used by many groups over the years to denote chemicals of high concern for bioaccumulation potential, especially with regard to the need to conduct long-term chronic toxicity testing (Refs. 51, 58, 59, 60, 61, 62, and 63).

As with BCF values, EPA believes that it is appropriate, for section 313 purposes, to use a criterion of 1,000 for BAF values. Since BAF values include consideration of additional routes of exposure it is appropriate to use a criterion that is at least equal to that set for BCF values. Support for a BAF criterion of 1,000 also comes from the Final Water Quality Guidance for the Great Lakes System (60 FR 15366). In that document EPA stated that bioaccumulation of persistent pollutants is a serious environmental threat to the Great Lakes Basin Ecosystem and that chemicals identified as bioaccumulative chemicals of concern (BCCs) (i.e., those with BAF values greater than 1,000) would receive increased attention and more stringent controls. That final Guidance designated as BCCs those chemicals with human health BAFs greater than 1,000 that were derived from certain field-measured BAFs or certain predicted BAFs. That previous designation of a high level of concern for chemicals with BAF values greater than 1,000 provides further support for the use of a BAF/BCF criterion of 1,000 for determining whether a chemical should be classified as bioaccumulative for purposes of section 313.

As with persistence, a number of organizations and internationally negotiated agreements have set numerical criteria for bioaccumulation, many of which have been developed through consensus processes. Some Canadian projects, many dealing with the Great Lakes basin, have used a BAF/BCF criterion of 5,000 or 1,000 or even 500 (Refs. 19, 64, and 65). Under the NAFTA-CEC, final screening criteria are under review that use a BAF/BCF criterion of 5,000 (Ref. 21) and the UNECE-LRTAP Protocol on POPs also established a BAF/BCF criterion of 5,000 (Ref. 22). In negotiation of the LRTAP Protocol, Germany proposed a BAF/BCF criterion of 1,000 (Ref. 22). The Chemical Manufactures Association (CMA) in its policy for identifying PBT chemicals (Ref. 23) established a BAF/BCF criterion of 5,000.

EPA requests comment on its use of the 1,000 BCF/BAF criterion.

C. Technical Review of Persistence and Bioaccumulation Data and Modeling Results

1. *Persistence and bioaccumulation data.* Table 1 below presents the bioaccumulation and persistence data for the PBT chemicals being considered in this proposed rule. More detailed discussions of the sources of these data are provided in the support documents (Refs. 47 and 66) which commenters should consult for additional information.

EPA's approach to the collection of persistence data was to identify reasonable ranges of half-lives for the principal environmental media (air, water/sediment, soil). By identifying reasonable ranges of half-lives for each chemical EPA was able to consider the available data in determining whether a chemical's half-life in a particular medium was above or below half-life criteria selected for persistence in that medium. For example, if the reasonable range of half-lives for a chemical in soil were from 3 to 5 months then EPA could conclude that the chemical would exceed a 2–month soil half-life criterion. In cases where the range of half-lives for

a chemical bracketed a particular criterion, EPA determined whether the available data supported the higher or lower end of the half-life range. For example, when considering a 6–month half-life criteria, if a chemical's half-lives in water range from 5 to 10 months, but the higher value was based on a better study, then EPA believes that it is reasonable to conclude that the chemical's half-life is greater than 6 months. EPA believes that this approach provided sufficient certainty to determine, for purposes of section 313, whether the persistence of a chemical in the principal environmental media was above or below a particular criterion.

As discussed in Unit VII.A.1.a., EPA used a two-tiered approach in considering the bioaccumulation and persistence potential for the chemicals in this proposal. For persistence the two tiers are for chemicals that persist in the environment in either water, sediment, or soil with a half-life of 2 months or greater but less than 6 months and for chemicals that persist in any of these media with a half-life of 6 months or greater. The two tiers for bioaccumulation are for BAFs and BCFs of equal to or greater than 1,000 but less than 5,000 and equal to or greater than 5,000. There are several chemical categories included in Table 1 for which the persistence and bioaccumulation potential of the members of the category vary. When considering the bioaccumulation and persistence potential of chemical categories EPA reviewed the individual bioaccumulation and persistence data for the category members and determined which tier the entire chemical category should be placed in. Some chemicals had half-life ranges that bracketed the persistence tiers, for example, heptachlor has a soil half-life range of 8 days to 4 years. In cases where the persistence data would determine which, if either tier a chemical should be in, a determination had to be made as to the most appropriate persistence data to use. This was the case for five of the chemicals discussed in the following paragraph. For these chemicals EPA considered the types of studies supporting the half-life ranges and determined the most appropriate tier for each chemical. The support document (Ref. 67) contains a more detailed description of the rationale for EPA's decision. Commenters should consult the docket for additional information.

Table 1.—Persistence and Bioaccumulation Data

Chemical Category/Chemical Name	CASRN	BCF	BAF	Air Half-life	Surface Water Half-life	Soil Half-life
Dioxin/Dioxin-Like Compounds						
*Polychlorinated dibenzo-p-*dioxins						
1,2,3,4,6,7,8-heptachlorodibenzo-*p*-dioxin	35822-46-9	1,466		12.2–4.2 hrs		~20 yrs
1,2,3,4,7,8-hexachlorodibenzo-*p*-dioxin	39227-28-6	5,176		12.4–2.7 hrs		~20 yrs
1,2,3,6,7,8-hexachlorodibenzo-*p*-dioxin	57653-85-7	3,981		12.4–2.7 hrs		~20 yrs
1,2,3,7,8,9-hexachlorodibenzo-*p*-dioxin	19408-74-3	1,426		12.4–2.7 hrs		~20 yrs
1,2,3,4,6,7,8,9-octachlorodibenzo-*p*-dioxin	3268-87-9	2,239		20.4–4.8 hrs		~20 yrs
1,2,3,7,8-pentachlorodibenzo-*p*-dioxin	40321-76-4	10,890		14.8–2.0 hrs		~20 yrs
2,3,7,8-tetrachlorodibenzo-*p*-dioxin	1746-01-6	5,755		9.6–1.2 hrs		20–1.5 yrs
Polychlorinated dibenzofurans						
1,2,3,4,6,7,8-heptachlorodibenzofuran	67562-39-4	3,545		25.0–4.3 hrs		~20 yrs
1,2,3,4,7,8,9-heptachlorodibenzofuran	55673-89-7	3,545		25.0–4.3 hrs		~20 yrs
1,2,3,4,7,8-hexachlorodibenzofuran	70648-26-9	3,586		13.3–3 hrs		~20 yrs
1,2,3,6,7,8-hexachlorodibenzofuran	57117-44-9	3,586		13.3–3 hrs		~20 yrs
1,2,3,7,8,9-hexachlorodibenzofuran	72918-21-9	10,300		13.3–3 hrs		~20 yrs
2,3,4,6,7,8-hexachlorodibenzofuran	60851-34-5	3,586		13.3–3 hrs		~20 yrs
1,2,3,4,6,7,8,9-octachlorodibenzofuran	39001-02-0	1,259		29.4–13.7 hrs		~20 yrs
1,2,3,7,8-pentachlorodibenzofuran	57117-41-6	33,750		11.6–1.2 hrs		~20 yrs
2,3,4,7,8-pentachlorodibenzofuran	57117-31-4	42,500		11.6–1.2 hrs		~20 yrs
2,3,7,8-tetrachlorodibenzofuran	51207-31-9	2,042		11.5–2.1 hrs		~20 yrs
Pesticides						
Aldrin	309-00-2	3,715		10 hrs–1 hr	24 days[1]	9 yrs–291 days
Chlordane	57-74-9	11,050	>6,000,000[2]	5 days–12 hrs	239 days	8-0.4 yrs
Dicofol	115-32-2	12,303		8 days–19 hrs	8.2 days–13 hrs	348-259 days
Heptachlor	76-44-8	19,953		10.5 hrs–1 hr	129.4–23.1 hrs	4 yrs–8 days
Isodrin	465-73-6	20,180		10 hrs–1 hr		5 yrs–180 days
Methoxychlor	72-43-5	8,128		12 hrs–1 hr	15.2–5 days	136–81 days
Pendimethalin	40487-42-1	1,944		21–2 hrs		1300–54 days
Toxaphene	8001-35-2	34,050		16 days–19 hrs	5 yrs–1 yr	11–1 yrs
Trifluralin	1582-09-8	5,674		3.2–0.42 hrs	36.5–4.5 days[1]	394–99 days

Table 1.—Persistence and Bioaccumulation Data—Continued

Chemical Category/Chemical Name	CASRN	BCF	BAF	Air Half-life	Surface Water Half-life	Soil Half-life
Polycyclic Aromatic Compounds						
Benzo(a)pyrene	50-32-8	912		2.4 hrs	17.3–5.4 yrs	14.6 yrs–151 days
Benzo(b)fluoranthene	205-99-2	5,631		1.4 days–3.4 hrs	≥100 days	14.2 yrs–87 days
Benzo(r,s,t)pentaphene	189-55-9	26,280		13 hrs–1 hr		371–232 days
Benzo(a)anthracene	56-55-3	800		13 hrs–1 hr	3-1.2 yrs	2.0 yrs–240 days
7,12-Dimethylbenz(a)anthracene	57-97-6	5,834		4–0.4 hrs	6 yrs–1 yr	28–20 days
Dibenzo(a,h)anthracene	53-70-3	31,440		13 hrs–1 hr	≥100 days	2 yrs–240 days
3-Methylcholanthrene	56-49-5	17,510		3–0.3 hrs	3.8–1.7 yrs	
7H-Dibenzo(c,g)carbazole	194-59-2	16,900		23–2 hrs		>160 days
Benzo(k)fluoranthene	207-08-9	10,090		12 hrs–1 hr		11 yrs–139 days
Benzo(j)fluoranthene	205-82-3	10,090		12 hrs–1 hr		10.5 yrs
Dibenzo(a,e)pyrene	192-65-4	6,875		13 hrs–1 hr		371–232 days
Dibenzo(a,h)pyrene	189-64-4	26,280		13 hrs–1 hr		371–232 days
Indeno(1,2,3-cd)pyrene	193-39-5	28,620		7.6–0.34 hrs		730–58 days
Dibenz(a,h)acridine	226-36-8	3,500		13 hrs–1 hr		>160 days
Dibenz(a,j)acridine	224-42-0	18,470		23–2 hrs		>160 days
Benzo(g,h,i)perylene	191-24-2	25,420		10.0–0.31 hrs	≥100 days	1.8 yrs–173 days
Dibenzo(a,e)fluoranthene	5385-75-1	26,280		10 hrs–1 hr		371–232 days[3]
5-Methylchrysene	3697-24-3	9,388		5–0.5 hrs	3.8 yrs–79 days[4]	2.7 yrs–255 days[4]
Dibenzo(a,l)pyrene	191-30-0	6,875		13 hrs–1 hr		371–232 days
Benzo(a)phenanthrene	218-01-9	800		13 hrs–1 hr	3.8 yrs–79 days	2.7 yrs–255 days
1-Nitropyrene	5522-43-0	908		4 days–10 hrs	44 yrs–16 yrs	
Benzo(j,k)fluorene (fluoranthene)	206-44-0	5,100		20–2 hrs		13 yrs–110 days
Metals/Metal Compounds						
Cobalt[5] and Cobalt Compounds	7440-48-4	1-2,000,000		see footnote 5	see footnote 5	see footnote 5
Mercury[5] and Mercury compounds	7439-97-6	7,000-36,000		see footnote 5	see footnote 5	see footnote 5
Vanadium[5] and Vanadium compounds	7440-62-2	100,000-1,000,000		see footnote 5	see footnote 5	see footnote 5
Polychlorinated Biphenyl (PCBs)	1336-36-3		>200,000[2,6]			
2,3,3′,4,4′,5,5′-heptachlorobiphenyl	39635-31-9	4,922		191–19 days	>56 days	>5–3.92 yrs
2,3,3′,4,4′,5-hexachlorobiphenyl	38380-08-4	37,590		127–13 days	>56 days	>5–3.42 yrs
2,3,3′,4,4′,5′-hexachlorobiphenyl	69782-90-7	37,590		114–11 days	>56 days	>5–3.42 yrs
2,3′,4,4′,5,5′-hexachlorobiphenyl	52663-72-6	37,590		114–11 days	>56 days	>5–3.42 yrs

Table 1.—Persistence and Bioaccumulation Data—Continued

Chemical Category/Chemical Name	CASRN	BCF	BAF	Air Half-life	Surface Water Half-life	Soil Half-life
3,3′,4,4′,5,5′-hexachlorobiphenyl	32774-16-6	73,840		88–9 days	>56 days	>5–3.42 yrs
2,3,3′,4,4′-pentachlorobiphenyl	32598-14-4	196,900	>134,000,000[2]	80-8 days	>56 days	7.25–0.91 yrs
2,3,4,4′,5-pentachlorobiphenyl	74472-37-0	196,900		67–7 days	>56 days	7.25–0.91 yrs
2,3′,4,4′,5-pentachlorobiphenyl	31508-00-6	184,300	>141,000,000[2]	80–8 days	>56 days	7.25–0.91 yrs
2′,3,4,4′,5-pentachlorobiphenyl	65510-44-3	196,900		50–5 days	>56 days	7.25–0.91 yrs
3,3′,4,4′,5-pentachlorobiphenyl	57465-28-8	196,900		57–6 days	>56 days	7.25–0.91 yrs
3,3′,4,4′-tetrachlorobiphenyl	32598-13-3	105,900		37–4 days	>98 days	4.83–0.91 yrs
Other Chemicals						
Hexachlorobenzene	118-74-1	29,600-66,000	>2,500,000[2]	1,582–158 days		5.7–2.7 yrs
Octachlorostyrene	29082-74-4	33,113	>117,000,000[2]	10 hrs–1 hr		5.7–2.7 yrs7
Pentachlorobenzene	608-93-5	8,318	>640,000[2]	460–46 days		194 days–>22 yrs
Tetrabromobisphenol A	79-94-7	780; 1,200; 3,200		9 days–1 day	84–48 days	44–179 days

[1]The reported half-life data for water are suspected to include significant removal from the medium by processes other than degradation (e.g., volatilization).
[2]Values are for Piscivorous Fish.
[3]Since data could not be found for this chemical, the data for the dibenzopyrenes (192–65–4; 189–64–0; 191–30–0), which are structural analogues, was used.
[4]Since data could not be found for this chemical, the data for benzo(a)phenanthrene (218–01–9), a structural analogue was used.
[5]The bioaccumulation potential for the parent metals is assumed to be equivalent to the associated metal compounds since in the environment the parent metals may be converted to a metal compound. Since metals are not destroyed in the environment they persist longer than 6 months.
[6]Lowest value reported for a dichlorinated PCB.
[7]Since no data could be found for this chemical, the data for the structural analogues hexachlorobenzene (118–74–1) and pentachlorobenzene (608–93–5) was used.

Benzo(j,k)fluorene (fluoranthene) has a soil half-life range of 110 days to 13 years, however the 13–year value is based on the results of a field study and thus fluoranthene was determined to persist in soil for greater than 6 months. As mentioned above, heptachlor has a soil half-life range of 8 days to 4 years, however the 4–year value is based on the results of a field study and thus heptachlor was also determined to persist for greater than 6 months in soil. Tetrabromobisphenol A has a surface water half-life range of 48 to 84 days and a soil half-life range of 44 to 179 days. Based on a review of the grab sample studies, it was determined that tetrabromobisphenol A should have a half-life in water and soil of greater than 2 months but less than 6 months. Trifluralin has a soil half-life range of 99 to 394 days, based on a review of the field studies for trifluralin it was determined that it should have a soil half-life of greater than 2 months but less than 6 months.

For a significant number of substances in several congeneric series (polychlorinated dioxins; furans; PACs), half-lives were derived by extrapolation from data for other substances in the series. This approach is generally considered acceptable if appropriate allowance is made for minor differences in molecular structure. No measured half-life data for soil or water that met the standards for data acceptability could be located for octachlorostyrene (CAS No. 29082–74–4). Therefore, EPA used half-lives for the structural analogs pentachlorobenzene (CAS No. 608–93–5) and hexachlorobenzene (CAS No. 118–74–1) for estimating half-lives for octachlorostyrene.

For the dioxin and dioxin-like compounds category the half-lives in soil for all members is clearly greater than 6 months. For bioaccumulation the members of this category have BCF values that range from a low of 1,259 to a high of 42,500 with 6 chemicals over 5,000 and with 6 chemicals between 3,500 and 5,000. Based on this data EPA believes that, as a category, the dioxin and dioxin-like compounds should be considered to have a BCF value greater than 5,000 since most of the members are close to or well above 5,000. However, as discussed in Unit VII.A.2., a special reporting threshold is required for this category, and therefore the BCF value for the category was not a major factor in selecting the proposed reporting threshold.

For the members of the polycyclic aromatic compounds (PACs) category, all but a few had soil or surface water half-lives well in excess of 6 months. The BCF values for the category ranged from a low of 800 to a high of 31,440 with 15 of the 20 category members having BCF values greater than 5,000. Based on this data EPA believes that, as a category, the polycyclic aromatic compounds should be considered to have a BCF value greater than 5,000. As an alternative, the category could be separated into two categories with appropriate reporting thresholds for each category. However, this would

tend to be more burdensome since some facilities might have to file two reports and because it would require further speciation of the members of the category.

EPA requests comment on this alternative proposal to create two PACs categories.

The section 313 listing for PCBs is not a category listing but its CAS number covers all PCBs making it the equivalent of a category of chemicals. For the PCBs in Table 1 and for additional PCBs listed in the support document (Ref. 66), the soil half-lives are greater than 6 months, the reported BAF values are well above 5,000 (Table 1 and Ref. 47), and, with one exception, the BCF values for those PCBs in Table 1 are above 5,000. For the one exception, 2,3,3′,4,4′,5,5′-heptachlorobiphenyl, the estimated BCF is 4,922 which, considering the data for the other PCBs, EPA believes is sufficiently close to 5,000 for this chemical to be considered to have a BCF of 5,000. Based on the available data EPA believes that all members covered by the section 313 PCBs listing should be considered to have soil half-lives greater than 6 months and BAF/BCF values greater than 5,000.

For metals and metal compounds, although a metal or metal compound can be converted to another metal compound, the metal is not destroyed in the environment. Thus, metals obviously persist for greater than 6 months. As for bioaccumulation potential, the BCF values are reported as ranges of values with extremely high values at the upper end of the range. For purposes of section 313 reporting, EPA considered mercury and mercury compounds to have BCF values greater than 5,000. During the inter-agency review process, some reviewers raised questions about the adequacy of the studies that were used to make the BCF determination for cobalt and cobalt compounds. EPA specifically requests comment on the adequacy of these studies for determining bioaccumulation potential for cobalt and cobalt compounds. At this time cobalt and cobalt compounds do not appear on the proposed regulatory text list of PBT chemicals with lowered reporting thresholds. However, depending on comments received, EPA may add cobalt and cobalt compounds to that list in the final rule. As discussed in Unit IV.C.7. of this preamble, EPA is also requesting comment on the sufficiency of the bioaccumulation data for vanadium and vanadium compounds.

EPA requests comment on its evaluation of persistence and bioaccumulation for each of the chemicals included in this rulemaking.

2. *Epoxidation of certain pesticides.* Epoxidation is one of the major mechanisms of microbial metabolism of the cyclodiene pesticides including aldrin, heptachlor, and isodrin (Ref. 68). Aldrin is epoxidized to dieldrin (Ref. 69); isodrin is epoxidized to endrin; and heptachlor is converted to heptachlor epoxide (Ref. 70). These transformations are common and have been reported to occur in microbes, crustaceans, insects, fish, mammals, and birds (Refs. 71, 72, 73 and 74). Epoxides of heptachlor and aldrin are both insecticidal, and thus their biological activity is prolonged in soil.

The persistence and bioaccumulation data for the epoxides endrin, dieldrin, and heptachlor epoxide are included in the support documents for persistence and bioaccumulation (Refs. 47 and 66). The persistence and bioaccumulation data for endrin include 3 to 7 hours in air, greater than 112 days in surface water, and 333 to 4,300 days in soil with a BCF value of 4,591. The persistence and bioaccumulation data for dieldrin include 3 to 30 days in air, greater than 56 days in surface water, and 175 to 1,080 days in soil with a BCF value of 4,467. The persistence and bioaccumulation data for heptachlor epoxide include 6 to 60 hours in air and 33 to 522 days in soil with a BCF value of 14,454. Thus all of these compounds persist in at least one medium and are highly bioaccumulative. Regarding the toxicity of these epoxides, EPA's Integrated Risk Information System (IRIS) indicates that dieldrin and heptachlor epoxide have been classified by EPA as Group B2 carcinogens (i.e., they are probable human carcinogens) and that endrin caused convulsions and liver toxicity in a 2–year feeding study in dogs (Ref. 75).

The epoxidation of the parent compounds aldrin, heptachlor, and isodrin is important in light of the fact that the epoxides produced are persistent, bioaccumulative, and toxic. Therefore, in the medium that the epoxide is formed the parent compounds are being transformed into another toxic chemical. This means that the half-lives of the parent compounds in the epoxidizing medium may underestimate the concern for the parent compounds since they are converted to another toxic chemical that also persists and bioaccumulates. This could be characterized as extending the persistence of a toxic chemical in that media. Often these compounds are considered together and listed as aldrin/dieldrin, isodrin/endrin, and heptachlor/heptachlor epoxide.

The rates of transformation from the parent chemical to the epoxide have not been well-characterized in all relevant media. However, it is important to consider that transformation of these parent compounds to their epoxides, regardless of the rate, results in the formation of products that are of concern for their persistence, bioaccumulation potential, and toxicity.

3. *Multimedia modeling results.* The results of the modified version of the EQC multimedia modeling runs were presented as ''total persistence half-lives'' (Ref. 76). The EQC model defines ''overall persistence'' or ''residence time'' as the ratio of the amount of chemical present in the evaluative environment at steady state to the total rate of loss. Total persistence is also expressed as the reciprocal of the total removal rate constant. The total persistence half-lives are calculated by multiplying the overall persistence by ln 2.

The use of the medium (i.e., the midpoint of the half-life range) and high half-life values for each medium resulted in overall persistence half-lives of greater than 2 months for all chemicals in Table 1 of this unit except 7,12-dimethylbenz(a)anthracene, heptachlor, methoxychlor, and trifluralin.

7,12-Dimethylbenz(a)anthracene was modeled using half-life ranges of 24 minutes to 4 hours for air, 1 to 6 years for water and sediment, and 20 to 28 days for soil. The results of the modified EQC model suggest that at steady state, sufficient quantities of this chemical will volatilize to the atmosphere and undergo hydroxy radical oxidation, and partition to soils with subsequent biodegradation that the overall environmental persistence will be 1 month.

Half-life ranges used for heptachlor were 1 to 10.5 hours for air, 23 hours to 5 days for water, and 8 days to 4 years for soil and sediment. Half-life ranges used for methoxychlor were 1 to 12 hours for air, 5 to 15.2 days for water and sediment, and 81 to 136 days for soil. Trifluralin was modeled using half-life ranges of 25 minutes to 3.2 hours for air, and 99 to 394 days for water, soil, and sediment. The modified EQC model predicts that at steady state, sufficient quantities of these chemicals will volatilize to the atmosphere and undergo hydroxy radical oxidation that the overall environmental persistence will be 0.03 months for heptachlor, 0.7 months for methoxychlor, and 0.6 months for trifluralin.

It should be noted that all of these compounds are expected to enter the atmosphere associated with particulate

matter or in particulate form. The method used for the estimation of hydroxy radical oxidation half-lives is applicable to chemicals in the vapor phase. Rates of oxidation for chemicals in particulate form or associated with particulate matter may be overestimated, but the extent is unknown and thus there is some question as to the accuracy of the data used in the modeling. Also, since sediment half-lives were not available for these chemicals, the sediment half-lives used in the modeling were that same as the surface water half-lives. Since sediment half-lives are usually longer than surface water half-lives this may result in an underestimation of the ''total persistence half-lives'' generated by the modified EQC model. In fact, when modeled using sediment half-lives four times that of the surface water half-lives, the ''total persistence half-lives' for these chemicals did increase (Ref. 76). For heptachlor there is also the issue of the epoxidation to heptachlor epoxide and how that transformation affects the overall persistence of heptachlor/heptachlor epoxide. Also, since 7,12-dimethylbenz(a)anthracene is a member of the polycyclic aromatic compounds category EPA believes that it would be best not to separate it out from the other 20 carcinogenic members of the category.

As stated in section A.5. of this unit, EPA intends to only use multimedia modeling results to override the medium-specific persistence data if all model inputs are judged to be accurate. Because of the uncertainties associated with the air half-lives for these chemicals and the lack of data on sediment half-lives, which could affect the modified EQC modeling results, EPA does not believe that the modeling results should be used to override the medium-specific persistence data for these chemicals.

EPA requests comments on how the results of the modified EQC multimedia modeling for these chemicals should affect their status as PBT chemicals for purposes of EPCRA section 313.

VI. Modifications to Proposed Dioxin and Dioxin-Like Compounds Category

In response to a petition from Communities For A Better Environment, EPA issued a proposed rule (62 FR 24887) to add a category of dioxin and dioxin-like compounds to the EPCRA section 313 list of toxic chemicals. As part of that action, EPA proposed to move 11 co-planar PCBs from their listing under CAS number 1336–36–3 to a dioxin and dioxin-like compounds category. To accomplish this, EPA proposed to add a qualifier to the current PCB listing so that it would read ''polychlorinated biphenyls (PCBs) (excluding those PCBs listed under the dioxin and dioxin-like compounds category)'' and to list each of the 11 PCBs by name and CAS number in the proposed dioxin and dioxin-like compounds category. As discussed in Unit V.C. of this preamble, EPA has determined that all PCBs persist and bioaccumulate. Since PCBs persist and bioaccumulate, EPA believes that they should be subject to lower reporting thresholds, and thus there is no need to move the 11 co-planar PCBs to the proposed dioxin and dioxin-like compounds category. Therefore, EPA has decided to withdraw its proposal to modify the current listing for PCBs and instead proposes to lower the reporting thresholds for the current PCB listing which covers all PCBs. EPA believes that, since all PCBs persist and bioaccumulate, it is appropriate to lower the reporting threshold for this class of chemicals and that this proposal is less burdensome than requiring separate reporting on the dioxin-like PCBs as part of the proposed dioxin and dioxin-like compounds category. Because of this change, the proposed dioxin and dioxin-like compounds category would include only the 7 polychlorinated dibenzo-*p*-dioxins and the 10 polychlorinated dibenzofurans identified in the proposed rule.

EPA requests comment on its withdrawal of the proposal to modify the current listing for PCBs by adding the qualifier described above.

In addition to the above modification to the dioxin and dioxin-like compounds category, EPA is proposing to add an activity qualifier to the category that limits reporting to facilities that manufacture these chemicals. These dioxin and dioxin-like compounds are ubiquitous in the environment and thus under the very low reporting thresholds necessary to get reports from any sources (see discussion in Unit VII.A.2. of this preamble), facilities that process raw materials would be required to report simply because the raw material contains background levels of these chemicals. In order to focus reporting on those facilities that actually add to the environmental loading of these chemicals, EPA is proposing to add the activity qualifier ''manufacture only'' to the category. This will mean that only those dioxin and dioxin-like compounds that are manufactured at the facility, including those coincidentally manufactured, will be the subject of reporting under section 313. This will not only focus attention on activities that add to the loading of these chemicals in the environment but it also significantly reduces the reporting burden for industry that would result without the activity qualifier.

EPA requests comment on this proposed qualifier for the dioxin and dioxin-like compounds category.

VII. Proposed Changes to Reporting Requirements for PBT Chemicals

A. Changes to Reporting Thresholds

1. *Selection of lower reporting thresholds.* In selecting potential lower reporting thresholds for PBT chemicals, EPA considered not only their persistence and bioaccumulation but also the potential burden that might be imposed on the regulated community. Each of these important considerations is discussed below.

a. *Persistence and bioaccumulation.* Because all PBT chemicals persist and bioaccumulate in the environment, they have the potential to pose human health and environmental risks over a longer period of time. Thus, even small amounts that enter the environment can lead to elevated concentrations in the environment and in organisms which can result in adverse effects on human health and the environment. The nature of PBT chemicals indicates that small quantities of such chemicals are of concern, which provides strong support for setting lower reporting thresholds than the current section 313 thresholds of 25,000 and 10,000 pounds. For determining how low reporting thresholds should be set for these chemicals, EPA has adopted a two-tiered approach. This approach recognizes that toxic chemicals that have very high persistence and bioaccumulation potentials (e.g., chemicals with half-lives of 6 months or more and BAF/BCF values of 5,000 or more), like those that have been widely recognized as PBT chemicals, are of greatest concern. EPA believes that for toxic chemicals that are highly persistent and bioaccumulative, any release of the toxic chemical can result in elevated concentrations in the environment and organisms because of their very high persistence and bioaccumulation potentials. As a result, consideration of persistence and bioaccumulation alone would lead EPA to set a reporting threshold for the subset of highly persistent bioaccumulative chemicals that approaches zero in order to provide relevant data to communities. Thus, EPA believes that it is appropriate to set a low threshold for toxic chemicals that persist and bioaccumulate and to set a lower threshold for toxic chemical that are highly persistent and

bioaccumulative. EPA has made this distinction between persistent bioaccumulative chemicals and highly persistent bioaccumulative chemicals by proposing to set lower reporting thresholds based on two levels of persistence and bioaccumulation potential. The two levels are for those PBT chemicals included in this rule that persist in the environment with a half-life of 2 months or greater but less than 6 months and that have BAF or BCF values of 1,000 or greater but less than 5,000 (the 2–month and 1,000 group) and for those chemicals that persist in the environment with a half-life of 6 months or greater and that have BAF or BCF values of 5,000 or greater (the 6–month and 5,000 group). EPA believes that based solely on the degree of persistence and bioaccumulation it would be appropriate to set section 313 manufacture, process, and otherwise use thresholds to 10 pounds for chemicals meeting the 2– to 6–month and 1,000 to 5,000 criteria and to 1 pound for chemicals meeting both the 6–month or greater and 5,000 or greater criteria. One exception to this is the reporting threshold for the dioxin and dioxin-like compounds category. See Unit VII.A.3. below.

EPA believes that it is appropriate to set two thresholds based on the degree of persistence and bioaccumulation of the chemicals because chemicals with a half-life of 6 months or greater and a BAF/BCF of 5,000 or greater have a higher exposure potential than chemicals with a half-life of 2 months or greater and a BAF/BCF of 1,000. EPA believes that communities have a greater right-to-know about chemicals which can reasonably be anticipated to be present in the community at higher levels. This greater exposure potential is illustrated in the examples below.

More of a given quantity of a chemical with a half-life of 6 months will exist in the environment 1 year after release than of a given quantity of a chemical with a half-life of 2 months. Specifically, on January 1, a facility releases 100 pounds of a chemical with a half-life of 6 months. On July 1, 50 pounds will remain in the environment; on December 31, 25 pounds will remain in the environment. On January 1, the same facility releases 100 pounds of a chemical with a half-life of 2 months. On July 1, 12.5 pounds will remain in the environment; on December 31, 1.6 pounds of the chemical will remain in the environment. The chemical with the half-life of 6 months will result in long-term elevated quantities of the chemical in the environment. Further, releases of persistent toxic chemicals that occur more frequently than once a year can rapidly result in large increases in the amounts of the chemicals present at any one time in the environment because the environment does not have sufficient time to remove these chemicals through degradation. This example is somewhat oversimplified because a chemical's biodegradation rate is dependent on so many environmental conditions and may fluctuate during the year depending on changes in environmental conditions. However, all conditions being equal, the chemical with the longer half-life will be present in the environment for a longer period of time.

The increased exposure potential also applies to chemicals with different BCFs. The identical amount of two different chemicals, chemical A with a BCF of 1,000 to fish and chemical B with a fish BCF of 5,000 will result in different exposures to fish that consume other organisms lower in the food chain, that have also been exposed to these chemicals. For example, organisms that consume the fish exposed to chemical B will usually be exposed to greater quantities of the chemical than organisms that consume the fish that was exposed to chemical A, assuming identical feeding rates and other conditions. Due to concerns for its higher accumulation potential, a lower threshold will be set for Chemical B.

b. *Consideration of burden in threshold selection.* As discussed above, in determining the appropriate reporting thresholds to propose for PBT chemicals, EPA started with the premise that low or very low reporting thresholds may be appropriate for this class of chemicals based on their persistence and bioaccumulation potentials only. EPA then considered the burden that would be imposed by four sets of reporting thresholds. The thresholds considered were: (1) the 1 and 10 pound thresholds discussed above; (2) 10 pounds for chemicals in the 6–month and 5,000 group with 100 pounds for chemicals in the 2–month and 1,000 group; (3) 100 pounds for chemicals in the 6–month and 5,000 group with 1,000 pounds for chemicals in the 2–month and 1,000 group; and (4) 1,000 pounds for both groups of chemicals. For each set of thresholds EPA estimated the number of facilities that might be required to report for the various PBT chemicals (see Table 4 in Unit X.E.4. of this preamble). Based on the potential burdens, EPA believes it is appropriate to lower the reporting thresholds to a level that would capture significantly more information about PBT chemicals than current thresholds but that would not be unduly burdensome on industry. Therefore, EPA is proposing to lower the manufacture, process, and otherwise use thresholds to 100 pounds for toxic chemicals meeting the 2– to 6–month and 1,000 to 5,000 criteria and to 10 pounds for toxic chemicals meeting the 6–month or greater and 5,000 or greater criteria.

EPA requests comment on its consideration of industry burden in establishing lower reporting thresholds, including the extent to which burden should be considered in EPA's decision. EPA requests comment on whether the Agency should lower the reporting thresholds to 1 pound for the 6–month and 5,000 group and 10 pounds for the 2–month and 1,000 group rather than the 10 and 100 pound reporting thresholds proposed in this document. EPA requests comment on whether there are any policy reasons for selecting the 1 and 10 pound reporting thresholds rather than the 10 and 100 pound reporting thresholds. Such policy reasons could include the fact that the 10 pound reporting threshold for the chemicals in the 6–month and 5,000 group, i.e., the chemicals that are highly persistent and bioaccumulative, may not capture all releases that are of concern to local communities. Alternatively, EPA also seeks comment on reasons for selecting reporting thresholds of 100 pounds and 1,000 pounds.

For purposes of this rulemaking the Agency has focused on persistence and bioaccumulation as a basis for setting lower reporting thresholds. EPA believes it has discretion to use other factors as part of its basis for modifying the reporting thresholds. For example, EPA could consider biomagnification, relative toxicity, persistence only or bioaccumulation only. EPA requests comment on these factors and on other factors that the Agency could consider in selecting reporting thresholds in the future.

c. *Relationship of TRI reporting thresholds to other statutory thresholds.* For purposes of establishing EPCRA section 313 reporting thresholds, Congress has expressed a clear intent to obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of the section, and to assure that this information is reported to EPA and the states and provided to the user community. In this action, by proposing to lower the reporting thresholds for certain persistent and bioaccumulative chemicals listed on EPCRA section 313, EPA is working to assure that communities are provided with data on these toxic chemicals, which are frequently manufactured, processed, or otherwise used in

quantities well below the existing reporting thresholds of 25,000 pounds and 10,000 pounds and consequently are not reported to EPA and the states. In choosing the proposed EPCRA section 313 thresholds for these PBT chemicals EPA took into consideration a number of factors including small business impacts, overall reporting burden, and report generation in addition to utility of the information. It has been EPA's goal, under the EPCRA section 313 program, to maintain a balance between community right-to-know and overall reporting burden for the affected industry.

EPCRA section 313 provides one of several authorities through which EPA collects data. Each of these authorities has different criteria and different purposes. Many are aimed at supporting environmental decisionmaking and standard setting with community involvement in these processes. The thresholds established under EPCRA section 313 are designed to meet the statutory requirements of the Act as well as the overarching goal of informing the public about chemical releases and other waste management practices in their communities. Other EPA statutes such as the Clean Water Act (CWA), the Clean Air Act (CAA), and Resource Conservation and Recovery Act (RCRA) also have information collection provisions, whose criteria, coverage, scope and purpose may be different from that of EPCRA section 313. The thresholds proposed here, for purposes of EPCRA section 313, should not be construed to limit or expand the data collection goals or authorities of other EPA programs.

For example, the Office of Air and Radiation (OAR) may require any sector to provide data as necessary to support the further implementation of the CAA. Under section 114 (a) of the CAA, the Administrator of EPA has the authority to write letters requesting and requiring the submission of data from CAA covered sources. A CAA data collection, may in part, be focused on the need to address questions about a specific industry sector or a particular type of emission. In such an instance, EPA may decide to base its information request on different facility sizes, thresholds of release, or burden of reporting. EPA has submitted an Information Collection Request to the Office of Management and Budget for an information collection effort under Section 114 of the CAA that would require all coal fired power plants over 25 MW to submit to EPA the results of analyses (coal sampling and for a representative sample of plants stack testing). This would allow a calculation of facility-specific mercury emissions for each coal fired plant. Unlike this proposed rule, the information collection effort under the CAA would require that analysis be performed that power plant operators may not be currently performing and thus would allow emissions estimates that may be more precise than those that would otherwise be provided under this proposed rule.

2. *Special reporting threshold for dioxin and dioxin-like compounds.* Based on the persistence and bioaccumulation data for the category of dioxin and dioxin-like compounds that EPA has proposed for addition to section 313, they would ordinarily be included in the 6–month and 5,000 group. However, this category of chemicals poses unique problems with regard to setting section 313 reporting thresholds. These chemicals are generally produced in extremely small amounts compared to other section 313 chemicals. Thus, in order to capture any release data at all, a much lower reporting threshold than those proposed above is required. EPA has received numerous comments suggesting that the reporting threshold for this category be set at zero. However, EPA does not believe that a zero threshold would be practical. Attempting to require facilities to determine if they manufacture, process, or otherwise use any amount whatsoever of these chemicals would be extremely burdensome and perhaps technically impossible. Without an actual numerical reporting threshold, many facilities might report some amount of these chemicals just to make sure that they are in compliance. This could lead to misleading and inaccurate data on the actual sources of these chemicals as well as imposing increased burden on reporting facilities. EPA believes that rather than setting a zero reporting threshold it would be better to set a very low threshold that provides facilities with a clear indicator of when they are required to report. EPA believes that a manufacture, process, or otherwise use reporting threshold of 0.1 gram for the category would capture the majority of releases likely to come from section 313 facilities. Since the current section 313 reporting instructions and forms do not require the reporting of amounts less than 1 pound, they would be modified to allow for the reporting of amounts less than 1 pound. EPA intends to develop reporting guidance for industries that may fall within this reporting category.

The guidance developed will be consistent with the methods and procedures that EPA has developed for determining if dioxin and dioxin-like compounds are present in various industrial processes, including Method 23 (Ref. 77) developed for electric utilities. In developing the reporting guidance for the dioxin and dioxin-like compounds category EPA will work with interested parties to provide the best possible guidance for reporting facilities.

EPA requests comment on whether reporting at this level would provide meaningful information to communities.

In addition to the proposed lower reporting threshold for the dioxin and dioxin-like compounds category, EPA is considering an alternative way of reporting release and other waste management data for this category. The toxicity of dioxin-like compounds is often expressed in terms of toxicity equivalents or TEQs. TEQs are determined by summing the products of multiplying concentrations of individual dioxin-like compounds times the corresponding toxicity equivalence factor (TEF) for that compound. Because of their common mechanism of action, TEFs have been established for dioxin-like compounds. TEFs represent order of magnitude estimates of the relative potency of dioxin-like compounds compared to 2,3,7,8-tetrachloro-p-dioxin (i.e., dioxin), and have been considered by EPA and the international scientific community to be a valid and scientifically sound approach for assessing the likely health hazard of dioxin-like compounds (Ref. 78). TEFs for the dioxin-like compounds included in the proposed dioxin and dioxin-like compounds category range from 0.5 to 0.001. Reporting release and other waste management information as a sum of all of the grams of the individual members of the dioxin and dioxin-like compounds category would not provide any information to determine the TEQs unless the distribution of the dioxin and dioxin-like compounds were otherwise known for any reported quantity. Without the distribution data the public would not be able to determine the relative hazard associated with such release and other waste management information. In addition, Agency reports concerning dioxin and dioxin-like compounds commonly describe dioxin emissions in terms of TEQs. Therefore, as an alternative to reporting release and other waste management data for the dioxin and dioxin-like compounds category as a grams-only sum of all members, EPA is proposing to have this information reported in terms of grams of TEQs. However, there are three significant disadvantages to reporting in TEQs. First, revisions in TEF factors for individual dioxin-like compounds in future years would require changes to

the calculations in the reported release and other waste management quantities, thus making year to year comparisons more difficult, unless the particular dioxin-like compounds are identified. Second, some facilities may not be able to report in TEQs, since, although they may be able to estimate a mass quantity for the category as a whole, they may not have enough information to estimate the relative distribution of all category members. Third, TEQ reporting would be different from all other TRI reporting, which is mass-based, and may cause additional confusion. However, if these problems can be resolved then reporting in terms of TEQs may provide more useful data to the public. Under this alternative method of reporting release and other waste management information, reporting thresholds would still be based on the total absolute weight of the members of the dioxin and dioxin-like compounds category, not on the equivalent weight of TEQs.

EPA requests comments on this alternative method of reporting release and waste management information for the dioxin and dioxin-like compounds category.

3. *Proposed reporting thresholds by chemical/category.* Table 2 contains the proposed section 313 reporting thresholds for each of the PBT chemicals included in this proposed rule. For purposes of section 313 reporting, threshold determinations for chemical categories must be based on the total of all toxic chemicals in the category (see 40 CFR 372.25(d)). For example, a facility that manufactures three members of a toxic chemical category would count the total amount of all three toxic chemicals manufactured towards the manufacturing threshold for that category. One report is filed for the category and all releases are reported on one Form R (the form for filing reports under EPCRA section 313 and PPA section 6607).

Table 2.—Reporting Thresholds for EPCRA Section 313 Listed PBT Chemicals

Chemical Name or Chemical Category Name	CASRN	Section 313 Reporting Threshold (in pounds unless noted otherwise)
Aldrin	309-00-2	100
Benzo(g,h,i)perylene	191-24-2	10
Chlordane	57-74-9	10
Dicofol	115-32-2	10
Dioxin and dioxin-like compounds category (manufacture only)	NA	0.1 grams
Heptachlor	76-44-8	10
Hexachlorobenzene	118-74-1	10
Isodrin	465-73-6	10
Methoxychlor	72-43-5	100
Octachlorostyrene	29082-74-4	10
Pendimethalin	40487-42-1	100
Pentachlorobenzene	608-93-5	10
Polycyclic aromatic compounds category	NA	10
Polychlorinated biphenyl (PCBs)	1336-36-3	10
Tetrabromobisphenol A	79-94-7	100
Toxaphene	8001-35-2	10
Trifluralin	1582-09-8	100
Mercury	7439-97-6	10
Mercury compounds	NA	10

B. Proposed Changes to the Use of the de minimis Exemption

As part of the final rule implementing the reporting provisions of EPCRA section 313 (53 FR 4500, February 16, 1988), EPA adopted a limited *de minimis* exemption for listed toxic chemicals in mixtures. The *de minimis* exemption allows facilities to disregard certain concentrations of chemicals in mixtures or other trade name products they import, process, or otherwise use in making threshold calculations and release and other waste management determinations for section 313 reporting. This exemption does not apply to the manufacture of a toxic chemical unless the toxic chemical is manufactured as an impurity or is imported.

EPA adopted this exemption in response to comments requesting some type of concentration limitation for listed toxic chemicals in mixtures or other trade name products as a burden reducing measure. Commenters contended that it would be extremely

burdensome for suppliers, processors, and other users of mixtures or trade name products to have to account for quantities below a *de minimis* level. Most of these commenters requested that EPA adopt a *de minimis* concentration limitation consistent with the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (HCS) requirement. The HCS provides that a supplier does not have to list a ''hazardous chemical'' component in a mixture if that chemical comprises less than 1.0% of the mixture or 0.1% where the chemical is a carcinogen as defined in 29 CFR 1910.1200(d)(4). OSHA chose the 1% and 0.1% limits because the Agency believed that they generally appeared to be protective of workers and were considered reasonable by a number of commenters.

EPA adopted the *de minimis* exemption primarily as a means of reducing burden associated with the new (at the time) EPCRA section 313 reporting requirements. The Agency chose the HCS levels because: (1) They were consistent with the existing OSHA requirements for developing Material Safety Data Sheet (MSDS) information and with other requirements under EPCRA sections 311 and 312; (2) suppliers of products were familiar with these levels; (3) for the first 2 years of reporting, users of these mixtures are only likely to be able to rely on the product MSDS for information about the content and percentage composition of covered toxic chemicals in these products; and (4) EPA did not expect that the processing and otherwise use of toxic chemicals at less than the *de minimis* concentration in mixtures would, in most instances, contribute significantly to the threshold determinations or releases of listed toxic chemicals from any given facility.

When determining whether the *de minimis* exemption applies to a listed toxic chemical, the facility must consider only the concentration of the toxic chemical in mixtures and trade name products in process streams in which the toxic chemical is involved in a reportable activity. If the toxic chemical in a process stream is manufactured as an impurity, imported, processed, or otherwise used and is below the appropriate *de minimis* concentration level, then the quantity of the toxic chemical in that process stream does not have to be applied to threshold determinations nor included in release or other waste management determinations. If a toxic chemical in a process stream is below the appropriate *de minimis* level, all releases and other waste management activities associated with the toxic chemical in that stream are exempt from EPCRA section 313 reporting. It is possible to meet an activity (e.g., processing) threshold for a toxic chemical on a facility-wide basis, but not be required to calculate releases or other waste management quantities associated with a particular process because that process involves only mixtures or trade name products containing the toxic chemical below the *de minimis* level.

As stated above, the intent of the *de minimis* exemption was primarily burden reduction. The *de minimis* exemption was not intended to be a general small quantity exemption, but rather an exemption based on the limited information likely to be readily available to facilities newly affected by EPCRA section 313. EPA did not expect in 1988 that ''the processing and [otherwise] use of mixtures containing less than the *de minimis* concentration would, in most instances, contribute significantly to the threshold determinations or releases of listed toxic chemicals from any given facility'' (53 FR 4509). However, given 10 years of experience with the program, EPA believes that there are many instances where a PBT chemical may exist in a mixture at a concentration below the 1% (or 0.1% for OSHA carcinogens) *de minimis* but where the manufacture, process, or otherwise use of the PBT chemical in that mixture would otherwise contribute significantly to or exceed the reporting thresholds proposed in this rule.

For example, a raw material is processed that contains less than the *de minimis* level of a PBT chemical. The quantity of raw material processed results in significantly more than the threshold quantity of the PBT chemical being processed. Also, during the processing of the PBT chemical, its concentration in the process stream remains below the *de minimis* level. However, the concentration of the PBT chemical in the wastestream that results from that processing activity is above the *de minimis* concentration level for that PBT chemical and the wastestream containing that PBT chemical is released to the land. In this example, because the concentration of the PBT chemical in the process stream is below the *de minimis* concentration, the *de minimis* exemption can be taken. As a result, (1) The quantities processed do not have to be applied to the processing threshold for that PBT chemical at the facility, and (2) quantities of the PBT chemical that are released or otherwise managed as waste as a result of this specific processing activity are exempt from release and other waste management determinations. The exemption applies even though the PBT chemical is concentrated above the *de minimis* level in the wastestream. This information would not be included in that facility's Form R.

In addition, EPA believes that the information available to the typical EPCRA section 313 reporter is generally greater than it was 10 years ago. Since 1987, the Air Pollution Emission Factors (AP-42) guidance document has been repeatedly updated and expanded. For example several new sections were added in 1996, including a section specific to electroplating. In the early 1990s, the Factor Information Retrieval data base (FIRE) was developed. EPA has developed several additional guidance documents and software programs, including Air CHIEF CD-ROM, TANKS, CHEMDAT8, and WATER8 (this is an analytical model for estimating chemical-specific air emissions from wastewater collection and treatment systems) to aid facilities in estimating releases. Facilities also have access to guidance from trade associations, e.g., National Council of the Paper Industry for Air and Stream Improvement, Inc. (NCASI).

Given that there may be significant releases of PBT chemicals in mixtures when the PBT chemicals exist below the *de minimis* limit and that even minimal releases of persistent bioaccumulative chemicals may result in elevated concentrations in the environment or in an organism that reasonably can be anticipated to result in significant adverse effects, EPA believes that allowing facilities to continue to take the *de minimis* exemption for PBT chemicals would deprive communities of important information on PBT chemicals. While these chemicals may exist in mixtures at below the *de minimis* levels they will concentrate in the environment and in organisms. Further, many of the PBT chemicals addressed in today's action have been shown to cause adverse effects at concentrations far less than the *de minimis* levels. For example, dioxins have been shown to cause adverse effects at concentration levels in the parts per trillion. Thus, because PBT chemicals can cause adverse effects at concentrations well below *de minimis* levels, EPA believes that the *de minimis* principle may no longer apply. See *Environmental Defense Fund v. EPA*, 82 F.2d 451, 466 (D.C. Cir. 1996); *Alabama Power Co. V. Costle*, 636 F.2d 323, 360 (D.C. Cir 1979). In addition, for the reasons articulated above, EPA is concerned about whether other similar regulatory exemptions continue to be

supportable for PBT chemicals. See e.g., 40 CFR 372.38(c).

Further, EPA believes that lowering the reporting thresholds for these chemicals while leaving the *de minimis* exemption in place may result in very limited reporting and undermine the very purpose of this action. Without a concomitant change in the *de minimis* exemption, lowering the reporting thresholds would not increase reporting for some of the PBT chemicals because much of their releases would be exempt due to their generally low concentrations in mixtures or other trade name products that are processed or otherwise used. The facility may exceed the reporting threshold based on some processes that involve the PBT chemical in a mixture where the PBT chemical is above the *de minimis* level or on activities for which the *de minimis* exemption is not applicable. However, EPA expects there will be significant numbers of activities that occur for which the *de minimis* exemption could otherwise be taken. All releases and other waste management activities associated with these activities would therefore be exempt.

Given that use of the *de minimis* exemption could significantly limit the amount of reporting on PBT chemicals for which lower reporting thresholds are being proposed in today's notice. EPA is proposing to eliminate the *de minimis* exemption for those toxic chemicals.

Therefore, EPA is proposing to modify 40 CFR 372.38(a) to add the following sentence to the end thereof:

> This exemption does not apply to toxic chemicals listed in § 372.28 (i.e., the chemicals for which thresholds have been lowered), except for purposes of § 372.45(d)(1).

EPA is not proposing to extend this modification to 40 CFR 372.45(d)(1) because the Agency believes that there is sufficient information available on PBT chemicals by suppliers. Requirement of additional information in this case would result in redundancies.

In past expansion actions, EPA has tried to retain burden reducing options wherever feasible. However, as the TRI program evolves to meet emerging community needs, EPA will need to reassess these exemptions and modify them as appropriate. EPA notes that the increase in burden resulting from eliminating the *de minimis* exemption for PBT chemicals would be limited to facilities that import, process, otherwise use or manufacture as impurities these chemicals. Many of the chemicals identified as persistent and bioaccumulative in today's action are not imported, processed, or otherwise used but are manufactured as byproducts. In the preamble to the 1988 final rule implementing the reporting provisions of EPCRA section 313 (53 FR 4500, February 16, 1988), EPA explained, that the ''*de minimis* limitation does not apply to the byproducts produced coincidentally as a result of manufacturing, processing, use, waste treatment, or disposal'' (see 53 FR 4501, column 1). EPA further explains on page 4504, column 3, its decision about the application of the *de minimis* exemption to impurities and byproducts:

> EPA has distinguished between toxic chemicals which are impurities that remain with another chemical that is processed, distributed, or used, from toxic chemicals that are byproducts either sent to disposal or processed, distributed, or used in their own right. EPA also considers that it would be reasonable to apply a *de minimis* concentration limitation to toxic chemicals that are impurities in another chemical or mixture. . . .Because the covered toxic chemical as an impurity ends up in a product, most producers of the product will frequently know whether the chemical is present in concentrations that exceed the *de minimis* level, and, thus may be listed on the Material Safety Data Sheet (MSDS) for that product under the OSHA HCS.
>
> This final rule does not adopt a *de minimis* concentration limitation in connection with the production of a byproduct. EPA believes that the facility should be able to quantify the annual aggregate pounds of production of a byproduct which is not an impurity because the substance is separated from the production stream and used, sold, or disposed of, unlike an impurity which remains in the product. (53 FR 4500, February 16, 1988).

Because many of the PBT chemicals being addressed in today's action are manufactured as byproducts and the *de minimis* exemption does not apply to such chemicals, eliminating it would have no effect on the reporting of those chemicals.

For toxic chemicals in mixtures that are imported, processed, or otherwise used, the increase in burden resulting from the elimination of the *de minimis* exemption would be limited because EPCRA does not require additional monitoring or sampling in order to comply with the reporting requirements under EPCRA section 313. EPCRA section 313(g)(2) states:

> In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released in the environment beyond the monitoring and measurement required under other provisions of law or regulation.

Information used should be based on production records, monitoring, or analytical data, guidance documents provided by EPA and trade associations and reasonable judgement on the part of the facility's management. No further monitoring or analysis of production, process, or use is required.

EPA requests comment on its proposed modification of the *de minimis* exemption. EPA also requests comments on whether the Agency should modify the exemptions at 40 CFR 372.38(c) (e.g., the laboratory exemption, and the otherwise use exemptions, including the structural component exemption, the routine janitorial or facility grounds maintenance exemption; the personal use exemption, the motor vehicle maintenance exemption, and the intake air and water exemption) such that they will not apply to PBT chemicals. The legal authority for these exemptions is also the *de minimis* principle, and as noted above, EPA is concerned that this doctrine may not be applicable to PBT chemicals.

C. Proposed Changes to the Use of the Alternate Threshold and Form A

On November 30, 1994, EPA published a final rule (59 FR 61488) that provides that facilities that have 500 pounds or less of production-related waste (the sum of sections 8.1 through 8.7 of Form R) may apply an alternate manufacture, process, and otherwise use reporting threshold of 1 million pounds. Facilities that have less than 500 pounds of production-related waste of a listed toxic chemical and that do not manufacture, process, or otherwise use more than 1 million pounds of that listed toxic chemical may file a Form A certification statement certifying that they do not exceed either of these quantities for the toxic chemical. This certification statement includes facility identification information and chemical identification information. EPA adopted the alternate threshold and the Form A as a means of reducing the burden associated with EPCRA section 313.

EPA believes that use of the existing alternate threshold and reportable quantity for Form A would be inconsistent with the intent of expanded PBT chemical reporting proposed in this rule. While the Form A does provide some general information on the quantities of the chemical that the facility manages as waste, this information is insufficient for conducting analyses on PBT chemicals

and would be virtually useless for communities interested in assessing risk from releases of PBT chemicals. First, the threshold category for amounts managed as waste does not include quantities released to the environment as a result of remedial actions or catastrophic events not associated with production processes (section 8.8 of Form R). Thus, the waste threshold category will not include all releases. Given that even small quantities of PBT chemicals may result in elevated concentrations in the environment or in an organism, that reasonably can be anticipated to result in significant adverse effects, EPA believes it would be inappropriate to allow an option that would exclude information on some releases. Second, the 500 pound waste threshold category could be interpreted by some users, as a worst-case, to mean that greater than 500 pounds of the chemical has been released into the environment (i.e., 500 pounds of production-related waste as release and some quantity of catastrophic release). Other users may assume that the facility had no catastrophic releases and all of the toxic chemical in waste was managed in a manner other than as release, e.g., the toxic chemical in waste was recycled. For chemicals where any release is a concern, an uncertainty level of 500 pounds will result in data that are virtually unusable. As a result, EPA is proposing to exclude all PBT chemicals from the alternate threshold of 1 million pounds. Therefore, EPA proposes to modify 40 CFR 372.27 to add a new paragraph (e) to read as follows:

(e) The provisions of this section do not apply to any toxic chemicals listed in § 372.28.

EPA requests comment on this limitation to the use of the Form A certification statement.

D. Proposed Changes to the Use of Range Reporting

For releases and off-site transfers for further waste management of less than 1,000 pounds of the toxic chemical, EPA allows facilities to report the amount either as a whole number or by using range codes. The reporting ranges are: 1–10 pounds; 11–499 pounds; and 500–999 pounds. For larger releases and off-site transfers for further waste management of the toxic chemical, the facility may report only the whole number. While EPA provided range reporting primarily as a burden reducing measure focused on small businesses, the Agency notes a number of drawbacks. Use of ranges could misrepresent data accuracy because the low or the high end range numbers may not really be that close to the estimated value, even taking into account its inherent error (i.e., errors in measurements and developing estimates). The user of the data must make a determination on whether to use the low end of the range, the mid-point, or the upper end. For example, a release of 501 pounds could be misinterpreted as 999 pounds if reported as a range of 500 to 999. This represents a 100 percent error. This uncertainty severely limits the applicability of release information where the majority of releases, particularly for PBT chemicals, are expected to be within the amounts eligible for range reporting. Given that the large uncertainty that would be part of these data would severely limit their utility, EPA believes that facilities should report numerical values, not ranges, for PBT chemicals. EPA, therefore, proposes to modify 40 CFR 372.85(b)(16)(i) to read as follows:

An estimate of the total releases in pounds per year (releases of toxic chemicals of less than 1,000 pounds per year may be indicated in ranges, except for toxic chemicals set forth in § 372.28) from the facility plus an indication of the basis of estimate:

EPA also proposes to modify 40 CFR 372.85(b)(16)(ii)(B) to read as follows:

An estimate of the amount of the chemical in waste transferred in pounds per year (transfers of toxic chemicals of less than 1,000 pounds per year may be indicated in ranges, except for toxic chemicals set forth in § 372.28) to each off-site location, and an indication of the basis for the estimate and an indication of the type of treatment or disposal used.

EPA requests comment on its proposal to not allow the use of range reporting in Form Rs for PBT chemicals.

E. Proposed Changes to the Use of the Half-Pound Rule and Whole Numbers

EPA requires that facilities report numerical quantities in sections 5, 6, and 8 of Form R as whole numbers and does not require more than two significant digits (except where the Agency allows range reporting; see Unit VII.D. of this preamble). EPA currently allows facilities to round releases of 0.5 pounds or less to zero (see Toxic Chemical Release Inventory Reporting Forms and Instructions: Revised 1997 Version (EPA 745–K–98–001), p. 27). The combination of requiring the reporting of whole numbers and allowing rounding to zero would result in a significant number of facilities reporting their releases of some PBT chemicals, notably dioxins, as zero. EPA, therefore, is proposing that all releases or other waste management quantities greater than a tenth of a pound of PBT chemicals (except dioxin) be reported, provided that the appropriate activity threshold has been exceeded. Releases and other waste management activities would continue to be reported to two significant digits. For quantities of 10 pounds or greater only whole numbers would be required to be reported. For quantities less than 10 pounds, fractional quantities, e.g., 6.2 pounds, rather than whole numbers would be required, provided the accuracy in the underlying data on which the estimate is based supports this level of precision. For the category of dioxin and dioxin-like compounds, which have a proposed reporting threshold of 0.1 gram, EPA is proposing that facilities report all releases and other waste management activities greater than 100 micrograms (i.e., 0.0001 gram). Remember, EPCRA only requires reporting to be based on the best readily available information or reasonable estimates.

EPA requests comment on the proposed requirement that, other than for the dioxin and dioxin-like compounds category, all non-zero releases of PBT chemicals greater than one tenth of a pound be reported. EPA also requests comment on using fractional quantities for reports under 10 pounds. EPA also requests comment on the proposed requirement that all non-zero releases of dioxin and dioxin-like compounds greater than 100 micrograms be reported.

VIII. Proposed Changes to Other EPCRA Reporting Requirements

A. Individual Reporting of Tetraethyl and Tetramethyl Lead

The alkyl lead compounds tetraethyl lead (CAS No. 78–00–2) and tetramethyl lead (CAS No. 75–74–1) are currently reportable under the EPCRA section 313 category listing for lead compounds. These alkyl lead compounds appear on the Binational Level 1 list of chemicals that have been identified for virtual elimination from the Great Lakes and are thus of special concern. It is not currently possible to individually track these two alkyl lead compounds under section 313 since they are not specifically identified in reports submitted under the lead compounds category. In order to track these alkyl lead compounds, EPA is proposing that separate reports be filed for these two members of the lead compounds category, which will allow identification of facilities that have these specific lead compounds. EPA believes that this method of reporting is consistent with the purpose and legislative history of EPCRA section

313, as illustrated in the following passage from the Conference report:

> In cases where the list of chemicals for which reporting is required refers to compounds of a ''chemical'' which is a group of related chemicals rather than a specific chemical with accompanying Chemical Abstracts Service (CAS) number, the person submitting the form may include aggregate data including all releases of those individual chemicals on one reporting form rather than listing data separately for each individual chemical in the group. Thus, for example, a single form can be submitted for ''polybrominated biphenyls'' as listed in Senate Environment and Public Works Committee Print No. 99-169 without identifying the individual polybrominated biphenyls being released or reporting release data separately for each one. This does not preclude the Administrator from requiring reporting on individual chemicals for which aggregate reporting otherwise would be required. (H. Rep. 99-962, 99th Cong., 2nd Sess., p. 296 (Oct. 3, 1986)).

As the last sentence in this passage clearly indicates, EPA is not precluded from requiring that members of a chemical category be reported separately.

Under this proposal, if any of the current manufacture, process, or otherwise use reporting thresholds for the lead compounds category are met, a facility would file one report for all members of the category excluding the two alkyl lead compounds. If the facility has 1 pound or more of tetraethyl or tetramethyl lead applicable toward the threshold determinations for the lead compounds category then separate reports would be filed for tetraethyl and tetramethyl lead. As an alternative proposal, the amounts of tetraethyl and tetramethyl lead could be combined and included in a single separate report.

EPA requests comment on whether this provision is appropriate, and if so, whether two separate reports should be filed for each of these alkyl lead compounds or whether one report that includes the amounts of both tetraethyl and tetramethyl lead should be required.

For this initial rulemaking on PBT chemicals, EPA reviewed the persistence and bioaccumulation data for tetraethyl lead and tetramethyl lead but not the available data for elemental lead or other lead compounds. EPA is aware of additional available data that may indicate that lead and/or lead compounds meet the bioaccumulation criteria discussed in this proposed rule. EPA intends to review these additional data to determine if lead and/or lead compounds should be considered PBT chemicals and whether it would be appropriate to establish lower reporting thresholds for these chemicals. Any such determination will be made part of an additional rulemaking activity.

B. Reporting Limitation for Cobalt and Vanadium in Alloys

EPA is proposing to list ''vanadium'' and ''vanadium compounds'' and delete the EPCRA section 313 listing for ''vanadium (fume or dust).'' EPA is also requesting comment on the adequacy of existing studies for determining the bioaccumulation potential of cobalt and cobalt compounds. Depending on the comments received, EPA may lower the reporting thresholds for cobalt and cobalt compounds. Both of these metals can be found in various types of alloys and are subject to reporting under section 313 when contained in these alloys. In response to several petitions that EPA has received, the Agency has been reviewing the issue of how metals contained in alloys should be reported under section 313. Because this issue is currently being reviewed, EPA does not believe that, at this time, it would be appropriate to increase reporting for those facilities that must submit reports for these metals when contained in alloys. EPA is therefore proposing to limit the reporting for vanadium and cobalt to exclude alloys that contain these metals from the lower reporting thresholds.

Since vanadium without the fume or dust qualifier would be a new section 313 listing EPA does not believe that, at this time, facilities should be subject to any additional reporting on alloys containing vanadium. EPA is therefore proposing to include the qualifier ''except when contained in an alloy'' in the new listing for vanadium. Including this qualifier will effectively exclude vanadium from reporting when contained in an alloy. EPA requests comment on the proposed qualifier to the vanadium listing.

If EPA lowers reporting thresholds for cobalt and cobalt compounds the situation would be somewhat more complicated since, unlike the proposed revised listing for vanadium, it is already a listed section 313 chemical and thus facilities must currently report on cobalt when contained in alloys. Since EPA has not made any final decisions concerning the reporting of cobalt or other metals in alloys EPA would not be prepared to make any changes, including lowering thresholds, to the current reporting requirements for cobalt when contained in alloys. If the reporting threshold for cobalt and cobalt compounds is lowered after considering comments, EPA would propose to exclude cobalt contained in alloys from the lower reporting thresholds and retain the current reporting thresholds for cobalt when contained in alloys. This would result in no changes to the reporting requirements for cobalt contained in alloys until EPA makes a final determination on whether there should be any changes to the reporting requirements for metals contained in alloys. However, EPA would not simply add the same qualifier to the listing for cobalt that is proposed to be added to vanadium since the alloy forms of cobalt will still be reportable but only under the current reporting thresholds. Therefore, EPA would make this distinction at 40 CFR 372.28, which is the new section of the CFR that will set forth the lower section 313 reporting thresholds being proposed in this action. This section would indicate that only cobalt not contained in an alloy would be subject to the lower reporting thresholds. As with the lower reporting thresholds proposed for other chemicals, EPA would also make this distinction clear in the section 313 Form R and Form A reporting instructions and other documents.

For purposes of section 313 reporting, EPA considers metal compounds that are used to make alloys to exist as the parent metal in the alloys. Under this proposed limitation for alloys, reporting facilities that use vanadium or cobalt to make alloys would still report for these metals since they are being used to manufacture an alloy. However, once incorporated into the alloy vanadium would not be reportable. Similarly, if EPA lowers the reporting threshold for cobalt and cobalt compounds in the final rule, cobalt incorporated in an alloy would not be subject to the lower reporting thresholds. Thus, the limitation on alloys reporting for vanadium and cobalt would apply to vanadium and cobalt compounds once they are incorporated into an alloy. The cutting, grinding, shaving, etc. of an alloy does not negate the reporting limitations for alloys containing vanadium and cobalt.

IX. Request for Comment

EPA recognizes that as the TRI Program has expanded, total reporting burden on the regulated community has increased. EPA is genuinely interested in reducing TRI reporting burden, while assuring that the goals and objectives of EPCRA section 313 continue to be met. During the inter-agency review process, EPA received several suggestions that, if implemented, may alter TRI reporting burden. In many cases, burden might decrease; in others it might increase. EPA welcomes comments on the following suggestions, particularly with respect to the resulting impacts on total burden and the Agency's ability to

continue to meet the goals and objectives of EPCRA section 313.

During the inter-agency review process the issue of using other factors in identifying PBT chemicals and/or in setting alternative reporting thresholds was raised. For example, it was suggested that EPA use throughput data and emissions factors to estimate the releases that would be reported at an ''average'' facility at each of the identified options for a lowered threshold and that EPA then use those estimates to select the lowered threshold that would capture some overall percentage of releases, e.g., 75–80%. EPA has not estimated the total national releases to all media for the toxic chemicals in this proposed rule (and in previously proposed and final rules) because EPA believes that (1) there is insufficient information currently available for these chemicals and (2) there is insufficient information on the numerous processes employed by all the sectors involved to calculate a comprehensive release estimate for the sector. While there are data available for some chemicals for some sectors, comprehensive data for all sectors and chemicals are unavailable and consequently, decisions would need to be based on an incomplete data set. It was also suggested that EPA might consider ''throughput'' (i.e., manufacture, processing, and use) in setting reporting thresholds. While data are generally more available on throughput than on releases, EPA also did not attempt to estimate the proportion of throughput covered by alternative reporting thresholds because of its concern that these estimates may not be of sufficient quality and completeness to help inform the selection of appropriate reporting thresholds with sufficient scientific certainty. EPA invites comment on these approaches and requests comment as well on appropriate methodologies for estimating releases and/or throughput, and on estimating releases from throughput data. EPA welcomes suggestions as well on other approaches that may assist the Agency when it is developing options for lowering TRI reporting thresholds, adding new facilities or adding additional chemicals.

In this proposal, EPA is using two criteria—the persistence and bioaccumulative characteristics—to identify those TRI-listed chemicals that would be subject to the lower PBT reporting thresholds. These criteria were also primary factors in developing the proposed thresholds. EPA believes it has discretion to use other factors as part of its basis for setting lower reporting thresholds. During the inter-agency review process the issue of using alternative criteria in identifying PBT chemicals and/or in setting alternative reporting thresholds was raised. These include, among others, degree of toxicity, environmental presence, and biomagnification. For example, it has been suggested that EPA should consider a chemical's potential to biomagnify (i.e., to increase in the tissues of organisms as it moves up the food chain) in determining if reporting thresholds should be lowered for PBT chemicals. EPA requests comment on whether these other factors should be considered in establishing reporting thresholds for PBT chemicals, and on what data might be available to use in considering such factors. For this issue, EPA specifically requests comment on the state of the science related to biomagnification and the current capability to establish appropriate quantitative criteria for biomagnification.

It has also been suggested that EPA should consider lowering the reporting thresholds for toxic chemicals that are either persistent or bioaccumulative. It has been suggested that if a toxic chemical meets either criteria, the toxic chemical is of concern if it can result in elevated concentrations in either the environment or in organisms. For example, metals are persistent and releases of metals will result in elevated concentrations in the environment because they do not degrade. This is independent of whether or not the metal is also bioaccumulative. EPA requests comment on whether it should consider lowering the reporting thresholds for EPCRA section 313 chemicals that are either persistent or bioaccumulative based on the criteria proposed in this rule.

During the inter-agency review process it was also suggested that EPA propose other mechanisms for further minimizing the potential impacts associated with lowering the reporting thresholds for PBT chemicals. For example, it was suggested that EPA develop a modified Form A with thresholds more appropriate for the PBT chemicals. Specifically, it was suggested that EPA develop an alternate threshold and a reportable quantity lower than the current Form A for the PBT chemicals. This could also be done in conjunction with other changes to the Form A that EPA is considering. While not adverse to considering such an approach, EPA believes that, in order to consider such an alternate threshold and reportable quantity for PBT chemicals, it may be appropriate for the Agency to collect and analyze several years worth of data at the lowered thresholds, including data from the recently added industry sectors, before it considers developing an alternate Form A threshold and reportable quantity appropriate for PBT chemicals. EPA requests comment on whether it should consider an alternate threshold and reportable quantity for PBT chemicals, as well as any suggestion on what should be considered if the Agency were to move forward with such a proposal.

There may also be other ways to minimize the burden associated with lowering the threshold. For example, one alternative to eliminating the *de minimis* exemption altogether would be to establish lower *de minimis* thresholds for PBT chemicals. EPA believes that such a modified exemption would need to be structured to ensure reporting on the majority of releases for the PBTs covered by this rule, while still providing burden relief for those facilities which import, process, use or manufacture extremely small concentrations (as impurities) of these chemicals. It has also been suggested by others that EPA might consider an activity qualifier restricting the lower reporting threshold to the manufacture of the PBTs, retaining the higher current thresholds with respect to import, process, or use activities. This would extend the approach EPA is proposing for dioxin to other PBT chemicals. EPA requests comment on these options and other similar approaches that might be adopted to reduce the burden associated with this PBT proposal.

It has also been suggested that EPA modulate the thresholds for reporting, requiring reporting at the lower thresholds every other year and reporting at the current thresholds in the out years. Because this would have the effect of modifying the reporting frequency for many facilities, EPA believes that it must comply with the EPCRA section 313(i) requirements for modifying the EPCRA section 313 reporting frequency. EPA is requesting comment on the utility of a modulated approach and whether that approach would provide for significant burden reduction for affected facilities. Specifically, EPA is interested in the comments on the approach itself as well as comments on whether EPA should modify the reporting frequency pursuant to EPCRA section 313(i) for either a select group of chemicals, such as the PBTs, or for a subset of facilities. In providing comments on this issue, commenters are encouraged to focus on the procedures laid out in section 313(i) of EPCRA. They are as follows:

To modify the reporting frequency, EPA must first notify Congress and then delay initiating the rulemaking for at least 12 months. In addition, EPA must find:

(A) ...that the modification is consistent with the provisions of subsection (h) of [section 313] based on -

(i) experience from previously submitted toxic chemical release forms,

(ii) determinations made under paragraph (3).]

Paragraph (3), in turn, provides that EPA must determine

(A) The extent to which information relating to the proposed modification provided on the toxic chemical release forms has been used by the Administrator or other agencies of the Federal government, States, local governments, health professionals and the public.

(B) The extent to which information is (i) readily available to potential users from other sources, such as State reporting programs, and (ii) provided to the Administrator under another Federal law or through as State program.

(C) The extent to which the modification would impose additional and unreasonable burdens on facilities subject to the reporting requirements under this section.

EPA welcomes comment on the availability of information that would allow the Agency to make the requisite findings under paragraph 3(B), especially how consideration of alternate reporting requirements should pertain to the recently added SIC codes for which reporting has not yet been received, the lack of readily available information on PBT chemicals from existing sources, and what available information may exist to allow EPA to address the requirements of the law. Therefore, EPA would be particularly interested in information relating to the findings required under paragraph 3(B).

X. Economic Analysis

EPA has prepared an economic analysis of the impact of this proposed action, which is contained in a document entitled ''Economic Analysis of the Proposed Rule to Modify Reporting of Persistent Bioaccumulative Toxic Chemicals under EPCRA Section 313'' (Ref. 79). This document is available in the public docket for this rulemaking. The analysis assesses the costs, benefits, and associated impacts of the proposed rule, including potential effects on small entities. The major findings of the analysis are briefly summarized here.

The estimates included in the following discussion reflect the estimated impacts associated with the PBT chemicals identified in the proposed regulatory text. However, as indicated previously, the Agency is also considering and seeking comment on lowering the reporting thresholds for cobalt and cobalt compounds. The estimated effect of lowering the reporting thresholds for cobalt and cobalt compounds would result in an estimated 3,500 reports, at an estimated burden of 370,000 hours (at a cost of $25 million) in the first year and an estimated burden of 208,000 hours (at a cost of $14 million) in each subsequent year. EPA estimates that 2 small businesses may experience impacts between 1% and 3% in subsequent years. Additional information about the potential effects associated with lowering the reporting thresholds for cobalt and cobalt compounds is included in the economic analysis (see Ref. 79).

A. Need for the Rule

Federal regulations exist, in part, to address significant market failures. Markets fail to achieve socially efficient outcomes when differences exist between market values and social values. Two causes of market failure are externalities and information asymmetries. In the case of negative externalities, the actions of one economic entity impose costs on parties that are external'' to any market transaction. For example, a facility may release toxic chemicals without accounting for the consequences to other parties, such as the surrounding community, and the prices of that facility's goods or services thus will fail to reflect those costs. The market may also fail to efficiently allocate resources in cases where consumers lack information. For example, where information is insufficient regarding toxic releases, individuals' choices regarding where to live and work may not be the same as if they had more complete information. Since firms ordinarily have little or no incentive to provide information on their releases and other waste management activities involving toxic chemicals, the market fails to allocate society's resources in the most efficient manner.

This proposed rule is intended to address the market failures arising from private choices about PBT chemicals that have societal costs, and the market failures created by the limited information available to the public about the release and other waste management activities involving PBT chemicals. Through the collection and distribution of facility-specific data on toxic chemicals, TRI overcomes firms' lack of incentive to provide certain information, and thereby serves to inform the public of releases and other waste management of PBT chemicals. This information enables individuals to make choices that enhance their overall well-being. Choices made by a more informed public, including consumers, corporate lenders, and communities, may lead firms to internalize into their business decisions at least some of the costs to society relating to their releases and other waste management activities involving PBT chemicals. In addition, by helping to identify areas of concern, set priorities and monitor trends, TRI data can also be used to make more informed decisions regarding the design of more efficient regulations and voluntary programs, which also moves society towards an optimal allocation of resources.

If EPA were not to take this proposed action adding certain PBT chemicals to TRI and lowering reporting thresholds, the market failure (and the associated social costs) resulting from the limited information on the release and disposition of PBT chemicals would continue. EPA believes that today's action will improve the scope of multi-media data on the release and disposition of PBT chemicals. This, in turn, will provide information to the public, empower communities to play a meaningful role in environmental decision-making, and improve the quality of environmental decision-making by government officials. In addition, this action will serve to generate information that reporting facilities themselves may find useful in such areas as highlighting opportunities to reduce chemical use or release and thereby lower costs of production and/or waste management. EPA believes that these are sound rationales for adding PBT chemicals to the TRI program and lowering reporting thresholds.

B. Regulatory Options

EPA evaluated a number of options in the development of this proposed rule. The options were created by varying the reporting thresholds for the PBT chemicals from their current levels of 25,000 pounds for manufacture and processing, and 10,000 pounds for otherwise use of EPCRA Section 313 chemicals. The options in table 3 summarize the scope of EPA's analysis.

Table 3.—Summary of Options Considered

Regulatory Option	Description of Option
Option 1	Reporting threshold of 1 pound manufactured, processed, or otherwise used for the highly persistent bioaccumulative chemicals. Reporting threshold of 10 pounds manufactured, processed, or otherwise used for the persistent bioaccumulative chemicals. Reporting threshold of 0.1 gram manufactured for the dioxin and dioxin-like compounds category.
Option 2	Reporting threshold of 10 pounds manufactured, processed, or otherwise used for the highly persistent bioaccumulative chemicals. Reporting threshold of 100 pounds manufactured, processed, or otherwise used for the persistent bioaccumulative chemicals. Reporting threshold of 0.1 gram manufactured for the dioxin and dioxin-like compounds category. This is the preferred option presented in the regulatory text.
Option 3	Reporting threshold of 100 pounds manufactured, processed, or otherwise used for the highly persistent bioaccumulative chemicals. Reporting threshold of 1,000 pounds manufactured, processed, or otherwise used for the persistent bioaccumulative chemicals. Reporting threshold of 0.1 gram manufactured for the dioxin and dioxin-like compounds category.
Option 4	Reporting threshold of 1,000 pounds manufactured, processed, or otherwise used for the highly persistent bioaccumulative chemicals and the persistent bioaccumulative chemicals. Reporting threshold of 1.0 gram manufactured for the dioxin and dioxin-like compounds category.

Reporting under all four options is affected by other proposed changes in reporting requirements for PBT chemicals. These proposed changes include the elimination of the *de minimis* exemption for PBT chemicals with lower thresholds and a requirement for all facilities to report on PBT chemicals using the Form R. The effect of the other proposed changes on reporting is described in chapter 2 of the economic analysis (Ref. 79).

Table 4 in section E.4. of this unit displays, for each option, the estimated number of additional reports for PBT chemicals expected under EPCRA section 313.

In proposing this rule, EPA has sought to balance the public's right to know about toxic chemical releases and other waste management practices in their neighborhoods and the benefits provided by this expanded knowledge with the costs the rule will likely impose on industry, including the impact on small entities.

C. Costs

The proposed rule will result in the expenditure of resources that, in the absence of the regulation, could be used for other purposes. The cost of the proposed rule is the value of these resources in their best alternative use. Most of the costs of the proposed rule result from requirements on industry. Table 5 in section E.4. of this unit displays the industry costs for each option based on the estimated number of facilities affected and the estimated number of additional reports. Under the option presented in the regulatory text (Option 2), approximately 9,500 facilities will submit approximately 17,000 additional Form R reports annually. As shown, aggregate industry costs in the first year for the proposed alternative are estimated to be $126 million; in subsequent years they are estimated to be $70 million per year. Industry costs are lower after the first year because facilities will be familiar with the reporting requirements, and many will be able to update or modify information from the previous year's report. EPA is expected to expend $1.8 million in the first year, and $1.4 million in subsequent years as a result of the proposed rule.

D. Benefits

In enacting EPCRA and PPA, Congress recognized the significant benefits of providing the public with information on toxic chemical releases and other waste management practices. TRI has empowered the Federal government, State governments, industry, environmental groups and the general public to fully participate in an informed dialogue about the environmental impacts of toxic chemicals in the United States. TRI's publicly available data base provides quantitative information on toxic chemical releases and other waste management practices. Since TRI's inception in 1987, the public, government, and the regulated community have had the ability to understand the magnitude of chemical releases in the United States, and to assess the need to reduce the uses and releases of toxic chemicals. TRI enables all interested parties to establish credible baselines, to set realistic goals for environmental progress over time, and to measure progress in meeting these goals over time. The TRI system is a neutral yardstick by which progress can be measured by all stakeholders.

The information reported to TRI increases knowledge of the amount of toxic chemicals released to the environment and the potential pathways of exposure, improving scientific understanding of the health and environmental risks of toxic chemicals; allows the public to make informed decisions on where to work and live; enhances the ability of corporate leaders and purchasers to more accurately gauge a facility's potential environmental liabilities; provides reporting facilities with information that can be used to save money as well as reduce emissions; and assists Federal, State, and local authorities in making better decisions on acceptable levels of toxic chemicals in the environment.

There are two types of benefits associated with TRI reporting those resulting from the actions required by the rule (such as reporting and recordkeeping), and those derived from follow-on activities that are not required by the rule. Benefits of activities required by the rule include the value of improved knowledge about the release and waste management of toxic chemicals, which leads to improvements in understanding, awareness and decisionmaking. It is expected that this rulemaking will generate such benefits by providing readily accessible information that otherwise would not be available to the public. The proposed rule will benefit ongoing research efforts to understand the risks posed by PBT chemicals and to evaluate policy strategies that address the risks.

The second type of benefits derive from changes in behavior that may

result from the information reported to EPCRA section 313. These changes in behavior, including reductions in releases of and changes in the waste management practices for toxic chemicals may yield health and environmental benefits. These changes in behavior come at some cost, and the net benefits of the follow-on activities are the difference between the benefits of decreased chemical releases and transfers and the costs of the actions needed to achieve the decreases.

Because the state of knowledge about the economics of information is not highly developed, EPA has not attempted to quantify the benefits of adding chemicals to TRI or changing reporting thresholds. Furthermore, because of the inherent uncertainty in the subsequent chain of events, EPA has also not attempted to predict the changes in behavior that result from the information, or the resultant net benefits, (i.e., the difference between benefits and costs). EPA does not believe that there are adequate methodologies to make reasonable monetary estimates of either the benefits of the activities required by the proposed rule, or the follow-on activities. The economic analysis of the proposed rule, however, does provide illustrative examples of how the proposed rule will improve the availability of information on PBT chemicals (Ref. 79).

E. Impacts on Small Entities

In accordance with the Regulatory Flexibility Act (RFA) and the Agency's longstanding policy of always considering whether there may be a potential for adverse impacts on small entities, the Agency has also evaluated the potential impacts of this proposed rule on small entities. The Agency's analysis of potentially adverse economic impacts is included in the Economic Analysis for this proposed rule (Ref. 79). The following is a brief overview of EPA's findings.

1. *Overall methodology*. This proposed rule may affect both small businesses and small governments. For the purpose of its analysis for the proposed rule, EPA defined a small business using the small business size standards established by the Small Business Administration (SBA). (For example, the SBA size standard is 500 employees for approximately 75% of the manufacturing industries, and either 750, 1,000 or 1,500 for the remaining manufacturing industries, which would mean that more than 98.5 percent of the manufacturing firms are classified as small businesses (Ref. 80)). EPA is interested in receiving comments on its use of the SBA size standards for defining small businesses. EPA defined small governments using the RFA definition of jurisdictions with a population of less than 50,000. No small organizations are expected to be affected by the proposed rule.

Only those small entities that are expected to submit at least one report are considered to be affected for the purpose of the small entity analysis, although EPA recognizes that other small entities will conduct compliance determinations under lower thresholds. The number of affected entities will be smaller than the number of affected facilities, because many entities operate more than one facility. Impacts were calculated for both the first year of reporting and subsequent years. First year costs are typically higher than continuing costs because firms must familiarize themselves with the requirements. Once firms have become familiar with how the reporting requirements apply to their operations, costs fall. EPA believes that subsequent year impacts present the best measure to judge the impact on small entities because these continuing costs are more representative of the costs firms face to comply with the proposed rule.

EPA analyzed the potential cost impact of the proposed rule on small businesses and governments for the manufacturing sector and in each of the recently added industry sectors separately in order to obtain the most accurate assessment for each. EPA then aggregated the analyses for the purpose of determining whether it could certify that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' RFA section 605(b) provides an exemption from the requirement to prepare a regulatory flexibility analysis for a rule where an agency makes and supports the certification statement quoted above. EPA believes that the statutory test for certifying a rule and the statutory consequences of not certifying a rule all indicate that certification determinations may be based on an aggregated analysis of the rule's impact on all of the small entities subject to it.

2. *Small businesses*. EPA used annual compliance costs as a percentage of annual company sales to assess the potential impacts on small businesses of this rule. EPA believes that this is a good measure of a firm's ability to afford the costs attributable to a regulatory requirement, because comparing compliance costs to revenues provides a reasonable indication of the magnitude of the regulatory burden relative to a commonly available measure of a company's business volume. Where regulatory costs represent a small fraction of a typical firm's revenue (for example, less than 1%, but not greater than 3%), EPA believes that the financial impacts of the regulation may be considered not significant. As discussed above, EPA also believes that it is appropriate to apply this measure to subsequent year impacts.

Based on its estimates of additional reporting as a result of the proposed rule, the Agency estimates that approximately 5,300 businesses will be affected by the proposed rule, and that approximately 3,600 of these businesses are classified as small based on the applicable SBA size standards. For the first reporting year, EPA estimates that approximately 16 small businesses may bear compliance costs between 1% and 3% of revenues, and that no small businesses will bear costs greater than 3%. In subsequent years, EPA estimates that approximately 4 small businesses may bear compliance costs between 1% and 3% of revenues, and that no small businesses will bear costs greater than 3%. As stated above, EPA believes that subsequent-year impacts are the appropriate measure of small business impacts.

3. *Small governments*. To assess the potential impacts on small governments, EPA used annual compliance costs as a percentage of annual government revenues to measure potential impacts. Similar to the methodology for small businesses, this measure was used because EPA believes it provides a reasonable indication of the magnitude of the regulatory burden relative to a government's ability to pay for the costs, and is based on readily available data.

EPA estimates that 46 publicly owned electric utility facilities, operated by a total of 37 municipalities, may be affected. Of these, an estimated 17 are operated by small governments (i.e., those with populations under 50,000). It is estimated that none of these small governments will bear annual costs greater than 1% of annual government revenues.

4. *All small entities*. As discussed above, approximately 4 small businesses are expected to bear costs over 1% of revenues after the first year of reporting. None of the affected small governments are estimated to bear costs greater than 1% of revenues. No small organizations are expected to be affected by the proposed rule. Thus, the total number of small entities with impacts above 1% of revenues does not change when the results are aggregated for all small entities (i.e., small businesses, small governments, and small organizations).

Table 4.—Summary of Reporting Under Regulatory Options

Chemical or Chemical Category	Estimated Number of Reports (Annual)			
	Option 1	Option 2	Option 3	Option 4
Alkyl lead (tetraethyl lead and tetramethyl lead)	134	134	134	134
Benzo(g,h,i)perylene	798	353	6	0
Dioxin and dioxin-like compounds category	1,863	1,863	1,863	812
Hexachlorobenzene	3,772	778	73	3
Mercury; mercury compounds category	11,378	5,230	2,367	1,454
Octachlorostyrene	303	230	67	65
Pentachlorobenzene	3,314	707	36	11
Pesticides (Aldrin, Chlordane, Dicofol, Heptachlor, Isodrin, Methoxychlor, Pendimethalin, Toxaphene, Trifluralin)	280	264	199	186
Polycyclic aromatic compounds (PAC) category	5,488	4,699	4,046	2,620
Polychlorinated biphenyls (PCBs)	3,605	2,267	1,259	177
Tetrabromobisphenol A	150	150	150	150
Vanadium; vanadium compounds category	654	654	654	654
Total	31,739	17,329	10,854	6,266

Table 5.—Summary of Reporting and Industry Cost of Regulatory Options

Regulatory Options	Annual		Estimated Industry Costs ($ million per year)	
	Number of Reporting Facilities	Number of Reports	First Year	Subsequent Years
1. Reporting threshold of 1 lb for highly PB chemicals, 10 lb for PB chemicals, 0.1 gram for dioxin	18,082	31,739	$232	$127
2. Reporting threshold of 10 lb for highly PB chemicals, 100 lb for PB chemicals, 0.1 gram for dioxin	9,515	17,329	$126	$70
3. Reporting threshold of 100 lb for highly PB chemicals, 1,000 lb for PB chemicals, 0.1 gram for dioxin	6,187	10,854	$78	$44
4. Reporting threshold of 1,000 lb for highly PB chemicals and PB chemicals, 1 gram for dioxin	3,748	6,266	$45	$25

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XII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this is an economically ''significant regulatory action'' because it is likely to have an annual effect of $100 million or more. This action therefore was submitted to the Office of Management and Budget (OMB) for review, and any substantive comments or changes made during that review have been documented in the public record.

B. Regulatory Flexibility Act

For the reasons explained in Unit X of this preamble, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. In brief, the factual basis of this determination is as follows: there are 17 small governments that may be affected by the proposed rule (i.e., will have to file reports under the proposed rule), none of which will bear annual costs greater than 1% of annual government revenues. EPA estimates that 4 of the approximately 3,600 small businesses potentially affected by the proposed rule will experience annual compliance costs above 1% of annual sales after the first year of reporting. Given these relatively small estimated impacts, for purposes of the RFA, EPA believes that the proposed rule will not have a significant economic impact on a substantial number of small entities. EPA's estimates are based on the economic analysis (Ref. 79), and are also discussed in Unit X. of this preamble. This determination is for the entire population of small entities potentially affected by this proposed rule, since the test for certification is whether the rule as a whole has a significant economic impact on a substantial number of small entities.

Notwithstanding the Agency's certification of this rule under section 605(b) of the RFA, EPA remains committed to minimizing real impacts on small entities where this does not unacceptably compromise the informational benefits of the rule. Although not required, EPA intends to prepare guidance for reporting on dioxin that will assist facilities in determining their compliance needs and in properly completing the form, which will help ensure that small entities receive assistance to ease their burden of compliance. EPA has prepared such documents for current reporters and has received positive feedback on their utility from the targeted facilities. In addition, the Agency is always interested in any comments regarding the economic impacts that this regulatory action would impose on small entities, particularly suggestions for minimizing that impact. Such comments may be submitted to the Agency at any time, to the address listed above. To ensure consideration during the development of the final rule, comments must be received by the data indicated in the ''DATES'' section.

Information relating to this determination has been provided to the Chief Counsel for Advocacy of the Small Business Administration, and is included in the docket for this rulemaking.

C. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and in accordance with the procedures at 5 CFR 1320.11. An Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No. 1363) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460, by calling (202) 260–2740, or electronically by sending an e-mail message to ''farmer.sandy@epa.gov.'' An electronic copy has also been posted with this **Federal Register** document on EPA's homepage with other information related to this action. The information requirements contained in this proposal would not become effective until OMB approves them. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information subject to OMB approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial publication in the **Federal Register**, are maintained in a list at 40 CFR part 9.

Provision of this information is mandatory, upon promulgation of a final rule, pursuant to EPCRA section 313 (42 U.S.C. 11023) and PPA section 6607 (42 U.S.C. 13106). EPCRA section 313 requires owners or operators of certain facilities manufacturing, processing, or otherwise using any of over 600 listed toxic chemicals and chemical categories (hereinafter toxic chemicals) in excess of the applicable threshold quantities, and meeting certain requirements (i.e., at least 10 FTEs or the equivalent), to report environmental releases and transfers of and waste management activities for such chemicals annually. Under section 6607 of the PPA, facilities must also provide information on the quantities of the toxic chemicals in waste streams and the efforts made to manage those waste quantities. The regulations codifying the EPCRA section 313 reporting requirements appear at 40 CFR part 372. Respondents may designate the specific chemical identity of a substance as a trade secret, pursuant to

EPCRA section 322 (42 U.S.C. 11042). Regulations codifying the trade secret provisions can be found at 40 CFR part 350.

Under the proposed rule, all facilities reporting to TRI on PBT chemicals would have to use the EPA Toxic Chemical Release Inventory Form R (EPA Form No. 9350-1). OMB has approved the existing reporting and recordkeeping requirements related to Form R, supplier notification, and petitions under OMB Control No. 2070–0093 (EPA ICR No. 1363).

For Form R, EPA estimates the industry reporting burden for collecting this information (including recordkeeping) to average 74 hours per report in the first year, at an estimated cost of $5,079 per Form R. In subsequent years, the burden is estimated to average 52.1 hours per report, at an estimated cost of $3,557 per Form R. These estimates include the time needed to review instructions; search existing data sources; gather and maintain the data needed; complete and review the collection of information; and transmit or otherwise disclose the information. The actual burden on any specific facility may be different from this estimate depending on the complexity of the facility's operations and the profile of the releases at the facility.

This proposed rule is estimated to result in reports from 9,500 respondents. Of these, 2,600 facilities are estimated to be reporting to TRI for the first time as a result of the rule, while 6,900 are currently reporting facilities that will be submitting additional reports. These facilities will submit an estimated additional 17,000 Form Rs. This proposed rule therefore results in an estimated total burden of 1.8 million hours in the first year, and 1 million hours in subsequent years, at a total estimated industry cost of $126 million in the first year and $70 million in subsequent years.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes, where applicable, the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. EPA's burden estimates for the rule take into account all of the above elements, considering that under section 313, no additional measurement or monitoring may be imposed for purposes of reporting.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to EPA at the address provided above, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Please remember to include the ICR number in any correspondence. The final rule will respond to any comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act and Executive Order 12875

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), EPA has determined that this action contains a Federal mandate'' that may result in expenditures of $100 million or more for the private sector in any 1 year, but that it will not result in such expenditures for State, local, and tribal governments, in the aggregate. Accordingly, EPA has prepared a written statement for this proposed rule pursuant to section 202 of UMRA, and that statement is available in the public docket for this rulemaking. The costs associated with this action are estimated in the economic analysis prepared for this proposed rule (Ref. 79), which is included in the public docket and summarized in Unit X. of this preamble. The following is a brief summary of the UMRA statement for the proposed rule.

This proposed rule is being promulgated pursuant to sections 313(b)(1)(B) and (d) of EPCRA, 42 U.S.C. section 11023(b)(1)(B) and (d), and section 6607 of the Pollution Prevention Act, 42 U.S.C. section 13106. The economic analysis contains an analysis of the benefits and costs of this proposed rule, which estimates that the total industry costs of the proposed rule will be $126 million in the first year and $70 million per year thereafter, and concludes that the benefits will be significant but cannot be assigned a dollar value due to the lack of adequate methodologies. This information is also summarized above in Unit X of this preamble. EPA believes that the benefits provided by the information to be reported under this proposed rule will significantly outweigh the costs imposed by today's action. The benefits of the information will in turn have positive effects on health, safety, and the natural environment through the behavioral changes that may result from that information.

EPA has not identified any Federal financial resources that are available to cover the costs of this proposed rule. As set forth in the economic analysis, EPA has estimated the future industry compliance costs (after the first year) of this proposed rule to be $70 million annually. Of those entities affected by today's action, EPA has not identified any disproportionate budgetary impact on any particular region, government, or community, or on any segment of the private sector. Based on the economic analysis, EPA has concluded that it is highly unlikely that this proposed rule will have an appreciable effect on the national economy.

EPA has determined that it is not required to develop a small government agency plan as specified by section 203 of UMRA or to conduct prior consultation with State, local, or tribal governments under section 204 of UMRA, because the proposed rule will not significantly or uniquely affect small governments and does not contain a significant Federal intergovernmental mandate.

Finally, EPA believes this proposed rule complies with section 205(a) of UMRA. The objective of this proposed rule is to expand the public benefits of the TRI program by exercising EPA's discretionary authority to add chemicals to the program and to lower reporting thresholds, thereby increasing the amount of information available to the public regarding the use, management and disposition of listed toxic chemicals. In making additional information available through TRI, the Agency increases the utility of TRI data as an effective tool for empowering local communities, the public sector, industry, other agencies, and State and local governments to better evaluate risks to public health and the environment, particularly at the local level.

As described in Unit VII.A.1.ii. of this preamble, EPA considered burden in the threshold selection. The rule also contains reporting requirements that will limit burden (e.g., reporting limitations for vanadium in alloys and a ''manufacture only'' activity qualifier for dioxin). In addition, existing burden-reducing measures (e.g., the laboratory exemption, and the otherwise use exemptions, which include the routine

janitorial or facility grounds maintenance exemption, motor vehicle maintenance exemption, structural component exemption, intake air and water exemption and the personal use exemption) will apply to the facilities that file new reports as a result of this proposed rule. EPA also will be assisting small entities subject to the proposed rule, by such means as providing meetings, training, and compliance guides in the future, which also will ease the burdens of compliance.

Many steps have been and will be taken to further reduce the burden associated with this proposed rule, and to EPA's knowledge there is no available alternative to the proposed rule that would obtain the equivalent information in a less burdensome manner. For all of these reasons, EPA believes the rule complies with UMRA section 205(a).

E. Executive Orders 12898 and 13045

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' the Agency must consider environmental justice related issues with regard to the potential impacts of this action on environmental and health conditions in low-income populations and minority populations. Pursuant to Executive Order 13045 (62 FR 19885, April 23, 1997), entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' if an action is economically significant under Executive Order 12866, the Agency must, to the extent permitted by law and consistent with the agency's mission, identify and assess the environmental health risks and safety risks that may disproportionately affect children.

By lowering the section 313 reporting thresholds for PBT chemicals, EPA is providing communities across the United States (including low-income populations and minority populations) with access to data that may assist them in lowering exposures and consequently reducing chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. Therefore, the informational benefits of the proposed rule will have a positive impact on the human health and environmental impacts of minority populations, low-income populations, and children.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: December 24, 1998.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR part 372 be amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 would continue to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

§ 372.22 [Amended]

2. In § 372.22(c), by removing the phrase ''§ 372.25 or § 372.27.'' and adding in its place ''§ 372.25, § 372.27, or § 372.28.''

§ 372.25 [Amended]

3. In the introductory text of § 372.25, by removing the first clause ''Except as provided in § 372.27,'' and adding in its place ''Except as provided in § 372.27 and § 372.28,''.

4. In § 372.27, by adding a new paragraph (e) to read as follows:

§ 372.27 Alternate threshold and certification.

* * * * *

(e) The provisions of this section do not apply to any chemicals listed in § 372.28.

5. By adding a new § 372.28 to subpart B to read as follows:

§ 372.28 Lower thresholds for chemicals of special concern.

(a) Notwithstanding § 372.25 or § 372.27, for the toxic chemicals set forth in this section, the threshold amounts for manufacturing (including importing), processing, and otherwise using such toxic chemicals are as set forth in this section.

(1) Chemical listing in alphabetic order.

Chemical name	CAS No.	Reporting threshold
Aldrin	00309-00-2	100
Benzo(g,h,i)perylene	00191-24-2	10
Chlordane	00057-74-9	10
Dicofol	00115-32-2	10
Heptachlor	00076-44-8	10
Hexachlorobenzene	00118-74-1	10
Isodrin	00465-73-6	10
Mercury	07439-97-6	10
Methoxychlor	00072-43-5	100
Octachlorostyrene	29082-74-4	10
Pendimethalin	40487-42-1	100
Pentachlorobenzene	00608-93-5	10
Polychlorinated Biphenyl (PCBs).	01336-36-3	10
Tetrabromobisphenol A	00079-94-7	100
Toxaphene	08001-35-2	10
Trifluralin	01582-09-8	100

(2) Chemical categories in alphabetic order.

Category name	Reporting threshold
Dioxin and Dioxin-Like Compounds (manufacture only): (This category includes only those chemicals listed below). 67562-39-4 1,2,3,4,6,7,8-Heptachlorodibenzofuran 55673-89-7 1,2,3,4,7,8,9-Heptachlorodibenzofuran 70648-26-9 1,2,3,4,7,8-Hexachlorodibenzofuran 57117-44-9 1,2,3,6,7,8-Hexachlorodibenzofuran 72918-21-9 1,2,3,7,8,9-Hexachlorodibenzofuran 60851-34-5 2,3,4,6,7,8-Hexachlorodibenzofuran 39227-28-6 1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin 57653-85-7 1,2,3,6,7,8-Hexachlorodibenzo-p-dioxin 19408-74-3 1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin 35822-46-9 1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin 39001-02-0 1,2,3,4,6,7,8,9-Octachlorodibenzofuran 03268-87-9 1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin 57117-41-6 1,2,3,7,8-Pentachlorodibenzofuran 57117-31-4 2,3,4,7,8-Pentachlorodibenzofuran 40321-76-4 1,2,3,7,8-Pentachlorodibenzo-p-dioxin	0.1 grams

Category name	Reporting threshold
51207-31-9 2,3,7,8-Tetrachlorodibenzofuran 01746-01-6 2,3,7,8-Tetrachlorodibenzo-p-dioxin	
Mercury compounds	10
Polycyclic aromatic compounds (PACs): (This category includes only those chemicals listed below). 00056-55-3 Benz(a)anthracene 00205-99-2 Benzo(b)fluoranthene 00205-82-3 Benzo(j)fluoranthene 00207-08-9 Benzo(k)fluoranthene 00206-44-0 Benzo(j,k)fluorene 00189-55-9 Benzo(r,s,t)pentaphene 00218-01-9 Benzo(a)phenanthrene 00050-32-8 Benzo(a)pyrene 00226-36-8 Dibenz(a,h)acridine 00224-42-0 Dibenz(a,j)acridine 00053-70-3 Dibenzo(a,h)anthracene	10
00194-59-2 7H-Dibenzo(c,g)carbazole 05385-75-1 Dibenzo(a,e)fluoranthene 00192-65-4 Dibenzo(a,e)pyrene 00189-64-0 Dibenzo(a,h)pyrene 00191-30-0 Dibenzo(a,l)pyrene 00057-97-6 7,12-Dimethylbenz(a)anthracene 00193-39-5 Indeno[1,2,3-cd]pyrene 00056-49-5 3-Methylcholanthrene 03697-24-3 5-Methylchrysene 05522-43-0 1-Nitropyrene	

(b) The threshold determination provisions at § 372.25(c)–(h) and the exemptions at § 372.38(b)–(h) are applicable to the toxic chemicals listed in paragraph (a) of this section.

§ 372.30 [Amended]

6. In § 372.30(a), by removing the phrase ''in § 372.25 at'' and adding in its place ''in § 372.25, § 372.27, or § 372.28 at''.

7. In § 372.38(a), by adding the following sentence at the end of the paragraph to read as follows:

§ 372.38 Exemptions.

(a) * * * This exemption does not apply to toxic chemicals listed in § 372.28, except for purposes of § 372.45(d)(1).

* * * * *

8. In § 372.65,

i. By removing in paragraph (a) the entry ''Vanadium (fume or dust)'' and adding in its place ''Vanadium (except when contained in an alloy)''.

ii. By removing in paragraph (b) for CAS no. 7440–62–2, the entry ''Vanadium (fume or dust)'' and adding in its place ''Vanadium (except when contained in an alloy)''.

iii. By adding chemicals to paragraph (a) alphabetically.

iv. By adding chemicals to paragraph (b) by CAS no. sequence.

v. By adding two categories to paragraph (c) alphabetically.

vi. By adding two chemicals to paragraph (c) under the polycyclic aromatic compounds (PACs) category.

The amendments and additions read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

* * * * *

(a) * * *

Chemical name	CAS No.	Effective date
* * * *	* * *	
Benzo(g,h,i)perylene	00191-24-2	1/00
* * * *	* * *	
Octachlorostyrene	29082-74-4	1/00
* * * *	* * *	
Pentachlorobenzene	00608-93-5	1/00
* * * *	* * *	
Tetrabromobisphenol A	00079-94-7	1/00
* * * *	* * *	

(b) * * *

CAS No.	Chemical name	Effective date
* * * * * * *		
00079-94-7	Tetrabromobisphenol A	1/00
* * * * * * *		
00191-24-2	Benzo(g,h,i)perylene	1/00

CAS No.	Chemical name	Effective date
	* * * * * * *	
00608-93-5	Pentachlorobenzene	1/00
	* * * * * * *	
29082-74-4	Octachlorostyrene	1/00
	* * * * * * *	

(c) * * *

Category name	Effective date
* * * * * * *	
Dioxin and Dioxin-Like Compounds (manufacture only): (This category includes only those chemicals listed below)	1/00
67562-39-4 1,2,3,4,6,7,8-Heptachlorodibenzofuran	
55673-89-7 1,2,3,4,7,8,9-Heptachlorodibenzofuran	
70648-26-9 1,2,3,4,7,8-Hexachlorodibenzofuran	
57117-44-9 1,2,3,6,7,8-Hexachlorodibenzofuran	
72918-21-9 1,2,3,7,8,9-Hexachlorodibenzofuran	
60851-34-5 2,3,4,6,7,8-Hexachlorodibenzofuran	
39227-28-6 1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin	
57653-85-7 1,2,3,6,7,8-Hexachlorodibenzo-p-dioxin	
19408-74-3 1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin	
35822-46-9 1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin	
39001-02-0 1,2,3,4,6,7,8,9-Octachlorodibenzofuran	
03268-87-9 1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin	
57117-41-6 1,2,3,7,8-Pentachlorodibenzofuran	
57117-31-4 2,3,4,7,8-Pentachlorodibenzofuran	
40321-76-4 1,2,3,7,8-Pentachlorodibenzo-p-dioxin	
51207-31-9 2,3,7,8-Tetrachlorodibenzofuran	
01746-01-6 2,3,7,8-Tetrachlorodibenzo-p-dioxin	
* * * * * * *	
Polycyclic aromatic compounds (PACs): This category includes only those chemicals listed below).	
* * * * * * *	
00206-44-0 Benzo(j,k)fluorene	1/00
* * * * * * *	
00056-49-5 3-Methylcholanthrene	1/00
* * * * * * *	
Vanadium compounds	1/00
* * * * * * *	

§ 372.85 [Amended]

9. In § 372.85,

i. By removing in paragraphs (b)(15)(i) introductory text and (b)(16)(ii)(B) the phrase ''may be indicated in ranges'' and adding in its place ''may be indicated in ranges, except for chemicals set forth in § 372.28''.

ii. By removing in paragraph (b)(16)(i)(B) the phrase ''may be indicated as a range'' and adding in its place ''may be indicated as a range, except for chemicals set forth in § 372.28''.

[FR Doc. 98–34835 Filed 12–30–98; 4:17 pm]

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Federal Register

Vol. 64, No. 2

Tuesday, January 5, 1999

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FEDERAL REGISTER PAGES AND DATES, JANUARY

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 5, 1999

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:

Disaster-set-aside program; published 1-5-99

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Oklahoma; published 11-6-98

Air quality implementation plans; approval and promulgation; various States:

Pennsylvania; published 11-6-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

GRAS or prior-sanctioned ingredients:

Magnesium carbonate, magnesium chloride, etc.

Technical amendment; published 1-5-99

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

Louisiana; published 1-5-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Bombardier; published 12-21-98

Pratt & Whitney; published 12-31-98

Twin Commander Aircraft Corp.; published 10-9-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Kiwifruit research, promotion, and consumer information order; comments due by 1-11-99; published 11-10-98

Oranges, grapefruit, tangerines, and tangelos grown in Florida and imported grapefruit; comments due by 1-11-99; published 11-10-98

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Asian longhorned beetle; comments due by 1-11-99; published 11-13-98

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:

Women, infants, and children; special supplemental nutrition program—

Food and nutrition services and administration funding formulas rule; comments due by 1-11-99; published 10-13-98

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

Consumer protection standards—

Washing and chilling processes; retained water in raw meat and poultry products; poultry chilling performance standards; comments due by 1-13-99; published 12-14-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Pacific halibut and sablefish; individual fishing quota program; modified hired skipper requirements; comments due by 1-15-99; published 12-16-98

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Brand name items; use of purchase descriptions; comments due by 1-15-99; published 11-16-98

Vocational rehabilitation and education:

Veterans education—

Montgomery GI Bill-Active Duty; eligibility criteria, etc.; comments due by 1-11-99; published 11-12-98

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Generic maximum achievable control technology; comments due by 1-12-99; published 10-14-98

Air pollutants; hazardous; national emission standards:

Publicly owned treatment works; 188 HAP; list; comments due by 1-15-99; published 12-1-98

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Maine; comments due by 1-11-99; published 12-11-98

Air programs; State authority delegations:

California; comments due by 1-15-99; published 12-16-98

Air quality implementation plans; approval and promulgation; various States:

Nevada; comments due by 1-11-99; published 12-11-98

Consolidated Federal air rule:

Synthetic organic chemical manufacturing industry; comments due by 1-11-99; published 10-28-98

Superfund program:

CERCLA hazardous substances list; additions and removals—

Caprolactam; comments due by 1-14-99; published 12-15-98

Caprolactam; comments due by 1-14-99; published 12-15-98

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 1-13-99; published 12-14-98

National priorities list update; comments due by 1-14-99; published 12-15-98

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Incumbent local exchange carriers; biennial regulatory review; comments due by 1-11-99; published 12-11-98

Universal service—

Wireless telecommunications providers; local usage requirements; comments due by 1-11-99; published 12-10-98

Radio stations; table of assignments:

Texas; comments due by 1-11-99; published 12-4-98

FEDERAL EMERGENCY MANAGEMENT AGENCY

Flood insurance program:

Write-your-own program—

Expense allowance percentage; comments due by 1-12-99; published 11-13-98

Expense allowance; marketing incentives, performance measures, agent compensation, and compensation for unallocated loss expenses; comments due by 1-12-99; published 11-13-98

FEDERAL MARITIME COMMISSION

Tariffs and service contracts:

Shipping Act of 1984; agreements by ocean carriers and marine terminal operators; comments due by 1-14-99; published 12-15-98

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Brand name items; use of purchase descriptions; comments due by 1-15-99; published 11-16-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:

Adjuvants, production aids, and sanitizers—

Sodium 2,2'-methylenebis(4,6-di-tert-butylphenyl)phosphate; comments due by 1-11-99; published 12-11-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Health care programs; fraud and abuse:

Health Insurance Portability and Accountability Act—

Data collection program; final adverse actions reporting; comments due by 1-11-99; published 12-30-98