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Tuesday
October 5, 1999

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Contents

Federal Register

Vol. 64, No. 192

Tuesday, October 5, 1999

Agricultural Marketing Service
RULES
Cherries (sweet) grown in—
Washington, 53885
Milk marketing orders:
New England et al., 53885–53886

Agriculture Department
See Agricultural Marketing Service
See Forest Service
See Rural Utilities Service

Coast Guard
PROPOSED RULES
Boating safety:
Personal flotation devices; Federal requirements for wearing, 53971–53973
Practice and procedure:
Adjudicative procedures consolidation, 53970–53971

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 53994

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Pakistan, 54003
Thailand, 54003–54004
Textile and apparel categories:
Quota and visa requirements; exemptions—
Textile products produced or manufactured in various countries and re-imported, 54004

Customs Service
NOTICES
Uruguay Round Agreements Act (URAA):
Foreign entities violating textile transshipment and country of origin rules; list, 54067–54070

Defense Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 54004–54006

Employment Standards Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 54056–54057

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Kirtland Area Office (Sandia), NM, 54006–54007
Monticello Site, UT, 54006
Hydrogen Technical Advisory Panel, 54007

Energy Efficiency and Renewable Energy Office
RULES
Energy conservation:
Commercial and industrial equipment, energy efficiency program—
Electric motors; test procedures, labeling, and certification requirements, 54113–54172

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Alaska, 53931
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 53973–53976
Solid wastes:
Municipal solid waste landfill permit programs; adequacy determinations—
Rhode Island, 53976–53980
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 54009
Air quality implementation plans; approval and promulgation; various States:
Colorado; Class I visibility protection; information notice, 54010
Meetings:
National Drinking Water Advisory Council, 54011
Water Environment Federation; annual conference; 1999 National Wastewater Management Excellence Awards presentation, 54011–54013
Organization, functions, and authority delegations:
Point of contact for small business concerns regarding compliance problems arising from Year 2000 (Y2K) failures, 54013
Solid wastes:
Municipal solid waste landfill permit programs; adequacy determinations—
Guam, 54013–54014
Superfund program:
Prospective purchaser agreements—
Boyles Galvanizing Site, PA, 54014–54015

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Class D airspace, 53887–53888
Class E airspace, 53888–53896
PROPOSED RULES
Airworthiness directives:
Airbus, 53951–53956
Aviation safety:
Voluntarily submitted information; confidentiality protection, 53958
Class E airspace, 53956–53958

Federal Communications Commission
RULES
Common carrier services:
Telecommunications Act of 1996; implementation—
Customer proprietary network information and other customer information; telecommunications carriers' use, 53944–53949

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Various States, 53931–53944
PROPOSED RULES
Flood elevation determinations:
Various States, 53980–53993
NOTICES
Disaster and emergency areas:
California, 54015
Delaware, 54015–54016
New Jersey, 54016
New York, 54016–54017
Pennsylvania, 54017
South Carolina, 54017
Texas, 54018
Virginia, 54018–54019
Flood insurance program:
Cooperating Technical Communities flood hazard mapping initiative, 54019–54021
Meetings:
National Dam Safety Review Board, 54021

Federal Energy Regulatory Commission
PROPOSED RULES
Practice and procedure:
Complaint procedures, 53959–53960
NOTICES
Hydroelectric applications, 54007–54009

Federal Housing Finance Board
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 54021–54022

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 54022–54023

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Castle Rock, CO; Preble's meadow jumping mouse, 54052–54053

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
New drug applications—
Pyrantel tartrate, 53926–53927
Food additives:
Adjuvants, production aids, and sanitizers—
2,4-di-tert-pentyl-6-[1-(3,5-di-tert-pentyl-2-hydroxyphenyl)ethyl]phenyl acrylate, 53925–53926
Medical devices:
General and plastic surgery devices—
Nonresorbable gauze/sponge for external use, etc.; classification, 53927–53929
Protection of human subjects:
Investigational human drugs and biologics; determination that informed consent is not feasible or is contrary to best interests of recipients, etc., 54179–54189
PROPOSED RULES
Human drugs and biological products:
Evidence to demonstrate efficacy of new drugs against lethal or permanently disabling toxic substances when efficacy studies ethically cannot be conducted, 53960–53970
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 54028
Meetings:
Ranch Hand Advisory Committee; correction, 54028
Reports and guidance documents; availability, etc.:
Medical devices—
Breast prostheses; preclinical and clinical data and labeling, 54028–54029

Forest Service
PROPOSED RULES
National Forest System land and resource management planning, 54073–54112
NOTICES
Environmental statements; notice of intent:
Caribou National Forest, ID, 53994

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Reports and guidance documents; availability, etc.:
Research involving human biological materials; ethical issues and policy guidance; National Bioethics Advisory Commission executive summary, 54023–54028

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 54029–54030
Medicare:
Skilled nursing facilities; prospective payment system and consolidated billing; update; report to Congress; correction, 54030–54031

Health Resources and Services Administration
NOTICES
Advisory committees; annual reports; availability, 54031

Housing and Urban Development Department
RULES
FHA programs; introduction:
Administrative matters; editorial note removed; CFR correction, 53930

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 54054–54055
Meetings:
Employment Verification Pilots; evaluation status, 54055–54056

Inspector General Office, Health and Human Services Department
NOTICES
Hospice industry; compliance program guidance, 54031–54049

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Alaska Resource Adviory Council et al., 54051–54052

Internal Revenue Service
NOTICES
Meetings:
Citizen Advocacy Panels—
Brooklyn District, 54070
South Florida District, 54070–54071

International Trade Administration
NOTICES
Antidumping:
Drafting machines from—
Japan, 53996–53998
Forged stainless steel flanges from—
India, 53998–53999
Nitrile rubber from—
Japan, 53999
Antidumping and countervailing duties:
Hot-rolled lead and bismuth carbon steel products from—
United Kingdom, 53994–53996
Applications, hearings, determinations, etc.:
Massachusetts Institute of Technology, 53999–54000

Justice Department
See Immigration and Naturalization Service

Labor Department
See Employment Standards Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 54056

Land Management Bureau
NOTICES
Closure of public lands:
Utah, 54053–54054

Minerals Management Service
NOTICES
Royalty management:
Federal natural gas from Gulf of Mexico; invitation for exchange, 54054

National Institute of Standards and Technology
NOTICES
National Voluntary Conformity Assessment System Evaluation Program:
Telecommunications equipment certification bodies; accreditation bodies establishment, 54000–54001

National Institutes of Health
NOTICES
Meetings:
National Institute of Child Health and Human Development, 54049

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Shortraker and rougheye rockfish, 53950
Atlantic highly migratory species—
Large coastal shark, 53949–53950
NOTICES
Meetings:
International Commission for Conservation of Atlantic Tunas, U.S. Section Advisory Committee, 54001
New England Fishery Management Council, 54002
Permits:
Marine mammals, 54002

Nuclear Regulatory Commission
NOTICES
Meetings:
Medical Uses of Isotopes Advisory Committee, 54057–54058

Presidential Documents
PROCLAMATIONS
Special observances:
Breast Cancer Awareness Month, National (Proc. 7228), 54191–54194
Disability Employment Awareness Month, National (Proc. 7229), 54195–54196
Domestic Violence Awareness Month, National (Proc. 7230), 54197–54198
EXECUTIVE ORDERS
Armed Forces, U.S.; improving health protection of military personnel participating in particular military operations (EO 13139), 54173–54178
ADMINISTRATIVE ORDERS
Northern Mariana Islands; vessels located in the area (Memorandum of April 16, 1999), 53883

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Research and Special Programs Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 54065
Meetings:
Pipeline safety—
Rapid isolation of ruptured sections of gas transmission pipelines, 54066–54067
Pipeline Safety Advisory Committee, 54065–54066

Rural Utilities Service
RULES
Telecommunications standards and specifications:
Materials, equipment, and construction—
Central office equipment contract (not including installation) (RUS Form 545), 53886–53887

Securities and Exchange Commission
RULES
Securities:
International disclosure standards; foreign private issuers conformance, 53900–53925
NOTICES
Investment Company Act of 1940:
Exemption applications—
J.P. Morgan Securities Inc., 54058–54061
Applications, hearings, determinations, etc.:
HyperFeed Technologies, Inc., 54058

Small Business Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 54062
Interest rates; quarterly determinations, 54062

Social Security Administration
NOTICES
Agency information collection activities:
Proposed collection and submission for OMB review; comment request, 54062–54063

Substance Abuse and Mental Health Services Administration
NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 54049–54051

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Research and Special Programs Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 54064
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 54064
Meetings:
NAFTA Land Transportation Standards Subcommittee and Transportation Consultative Group: annual plenary session, 54064–54065

Treasury Department
See Customs Service
See Internal Revenue Service

United States Information Agency
RULES
Exchange visitor program:
Au pair programs; oversight and general accountability, 53929–53930

Veterans Affairs Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 54071

Separate Parts In This Issue

Part II
Department of Interior, Forest Service, 54073–54112

Part III
Department of Energy, Energy Efficiency and Renewable Energy Office, 54113–54172

Part IV
The President, 54173–54178

Part V
Department of Health and Human Services, Food and Drug Administration, 54179–54189

Part VI
The President, 54191–54198

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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.

3 CFR

Proclamations:

4865 (see Memorandum of April 16, 1999) 53883
7228.....54193
7229.....54195
7230.....54197

Executive Orders:

13139.....54175

Administrative Orders;

Memorandums:

April 16, 1999 53883

7 CFR

923.....53885
1000.....53885
1001.....53885
1002.....53885
1004.....53885
1005.....53885
1006.....53885
1007.....53885
1012.....53885
1013.....53885
1030.....53885
1032.....53885
1033.....53885
1036.....53885
1040.....53885
1044.....53885
1046.....53885
1049.....53885
1050.....53885
1064.....53885
1065.....53885
1068.....53885
1076.....53885
1079.....53885
1106.....53885
1124.....53885
1126.....53885
1131.....53885
1134.....53885
1135.....53885
1137.....53885
1138.....53885
1139.....53885
1755.....53886

10 CFR

431.....54114

14 CFR

71 (13 documents) 53887, 53888, 53889, 53890, 53891, 53892, 53893, 53894, 53895, 53896, 53898, 53899

Proposed Rules:

39 (2 documents) 53951, 53953
71 (2 documents) 53956, 53957
193.....53958

17 CFR

210.....53900
228.....53900
229.....53900
230.....53900
239.....53900
240.....53900
249.....53900
260.....53900

18 CFR

Proposed Rules:

385.....53959

21 CFR

50.....54180
178.....53925
312.....54180
558.....53926
878.....53927

Proposed Rules:

314.....53960
601.....53960

22 CFR

514.....53928

24 CFR

200.....53930

33 CFR

Proposed Rules:

20.....53970
175.....53971

36 CFR

Proposed Rules:

217.....59074
219.....59074

40 CFR

52.....53931

Proposed Rules:

52.....53973
258.....53976

44 CFR

65 (3 documents) 53931, 53933, 53936
67 (2 documents) 53938, 53939

Proposed Rules:

67 (2 documents) 53980, 53982

46 CFR

Proposed Rules:

5.....53970

47 CFR

64.....53944

50 CFR

635.....53949
679.....53950

Federal Register
Vol. 64, No. 192
Tuesday, October 5, 1999

Presidential Documents

Title 3—

The President

Memorandum of April 16, 1999

Delegation of Authority Under Sections 212(f) and 215(a)(1) of the Immigration and Nationality Act

Memorandum for the Attorney General

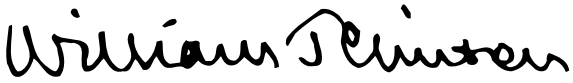
By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185(a)(1)), and in light of Proclamation 4865 of September 29, 1981, I hereby delegate to the Attorney General the authority to:

(a) Maintain custody, at any location she deems appropriate, and conduct any screening she deems appropriate in her unreviewable discretion, of any undocumented person encountered in vessels interdicted on the high seas in the general area of the Northern Mariana Islands in 1999, including the stateless vessel located west of the Northern Mariana Islands and identified by United States authorities on or about April 12, 1999; and

(b) Undertake any other appropriate actions with respect to such aliens permitted by law.

This memorandum is not intended to create, and should not be construed to create, any right or benefit, substantive or procedural, legally enforceable by any party against the United States, its agencies or instrumentalities, officers, employees, or any other person, or to require any procedures to determine whether a person is a refugee.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, April 16, 1999.

[FR Doc. 99–26061
Filed 10–4–99; 8:45 am]
Billing code 4410–07–M

Rules and Regulations

Federal Register
Vol. 64, No. 192
Tuesday, October 5, 1999

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket No. FV99–923–1 IFRC]

Sweet Cherries Grown in Designated Counties in Washington; Change in Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Agricultural Marketing Service published in the **Federal Register** on June 24, 1999, an interim final rule which changed the pack requirements prescribed under the Washington cherry marketing order. This document corrects the amendatory instruction in that document.

EFFECTIVE DATE: This correction is effective June 25, 1999.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, 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.

SUPPLEMENTARY INFORMATION:

Background

The interim final regulations that are the subject of this correction revised § 923.322, paragraph (e)(1) and the table, but did not change paragraph (e)(2).

Need for Correction

As published, the amendatory instruction concerning changes in the sweet cherry regulations needs to be clarified. Otherwise it may prove to be misleading. The instruction, as published in the **Federal Register**, states that ''Section 923.322 is amended by revising paragraph (e) to read as follows:''. Since the entire paragraph (e) was not changed and only paragraph (e)(1) was changed, the instruction should specify that only paragraph (e)(1) and the table are revised.

Correction of Publication

Accordingly, the publication of interim final regulations (FV99–923–1 IFR), which was the subject of FR Doc. 99–16055 is corrected as follows:

1. On page 33743, column 2, instruction number 2 is corrected to read ''In § 923.322, paragraph (e)(1) and the table are revised to read as follows:''.

Dated: September 29, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–25829 Filed 10–4–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138, and 1139

[DA–97–12]

Milk in the New England and Other Marketing Areas; Delay of Effective Date

7 CFR Part / Marketing Area

1000 General Provisions of Federal Milk Marketing Orders
1001 New England
1002 New York-New Jersey
1004 Middle Atlantic
1005 Carolina
1006 Upper Florida
1007 Southeast
1012 Tampa Bay
1013 Southeastern Florida
1030 Chicago Regional
1032 Southern Illinois-Eastern Missouri
1033 Ohio Valley
1036 Eastern Ohio-Western Pennsylvania
1040 Southern Michigan
1044 Michigan Upper Peninsula
1046 Louisville-Lexington-Evansville
1049 Indiana
1050 Central Illinois
1064 Greater Kansas City
1065 Nebraska-Western Iowa
1068 Upper Midwest
1076 Eastern South Dakota
1079 Iowa
1106 Southwest Plains
1124 Pacific Northwest
1126 Texas
1131 Central Arizona
1134 Western Colorado
1135 Southwestern Idaho-Eastern Oregon
1137 Eastern Colorado
1138 New Mexico-West Texas
1139 Great Basin

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; delay of effective date.

SUMMARY: This document announces a delay of the October 1, 1999, effective date of the order consolidating the current 31 Federal milk marketing orders into 11 orders. This action is based on a temporary restraining order by the U.S. District Court for the District of Vermont, which enjoins the Secretary of Agriculture from implementing the amendments to the above mentioned orders at this time. The current 31 Federal milk orders will therefore remain in effect.

EFFECTIVE DATE: The effective date of the final rule published on September 1, 1999 at 64 FR 47898 is delayed until further notice.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Branch Chief, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274, e-mail address John.Borovies@usda.gov.

SUPPLEMENTARY INFORMATION:

Prior Documents in This Proceeding

Proposed Rule: Issued January 21, 1998; published January 30, 1998 (63 FR 4802).

Correction: Issued February 19, 1998; published February 25, 1998 (63 FR 9686).

Extension of Time: Issued March 10, 1998; published March 13, 1998 (63 FR 12417).

Final Decision on Proposed Amendments: Issued March 12, 1999; published April 2, 1999 (64 FR 16026).

Correction: Issued July 8, 1999; published July 14, 1999 (64 FR 37892).

Notice of Referenda: Issued July 14, 1999: published July 21, 1999 (64 FR 39092).

Final Rule: Issued August 23, 1999; published September 1, 1999 (64 FR 47898).

Statement of Consideration

On September 28, 1999, the U.S. District Court for the District of Vermont

issued, on the basis of a civil action before it, a temporary restraining order enjoining the Secretary from implementing an order consolidating the current 31 Federal milk marketing orders into 11 orders. The consolidated orders were to become effective on October 1, 1999.

Accordingly, based upon the temporary restraining order granted by the U.S. District Court for the District of Vermont, the October 1, 1999, effective date of the order consolidating the current 31 milk marketing orders that was issued on August 23, 1999, and published in the **Federal Register** on September 1, 1999, at 64 FR 47898, is hereby delayed until further notice. The 31 current Federal milk orders will continue to remain in effect.

List of Subjects in 7 CFR Parts 1000, 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138, and 1139

Milk marketing orders.

The authority citation for Parts 1000 through 1139 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

Dated: September 30, 1999.

Michael V. Dunn,

Under Secretary, Marketing and Regulatory Programs.

[FR Doc. 99–25959 Filed 10–1–99; 10:38 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1755

RUS Form 545, Central Office Equipment Contract (Not Including Installation)

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations on Telecommunications Standards and Specifications for Materials, Equipment, and Construction to revise RUS Form 545 Central Office Equipment Contract (Not Including Installation). RUS is revising this contract form in order to incorporate contractual and technological changes.

EFFECTIVE DATE: November 4, 1999.

FOR FURTHER INFORMATION CONTACT: John J. Schell, Chief, Inside Plant Branch, Telecommunications Standards Division, Rural Utilities Service, Stop 1598, U.S. Department of Agriculture, 1400 Independence Ave., SW, Washington DC, 20250–1598, telephone number (202) 720–0671.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. A final rule related Notice entitled, ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034) exempts RUS and Rural Telephone Bank loans and loan guarantees from coverage under this Order.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effort will be given to this rule, and, in accordance with Sec. 212(c) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. Sec. 6912(c)), appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications program provides loans to borrowers at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0059 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.851, Rural Telephone Loans and Loan Guarantees; and number 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments for the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

The last revision to the RUS Form 545 was September 1966. Since that date, divestiture and competition legislation and regulation have brought about many changes in the conduct of telecommunications business. Notable advances of central office equipment technology such as Signaling System No. 7 (SS7), Advanced Intelligent Network (AIN), and Integrated Services Digital Network, have made many new services available. In order to address the above, significant changes have been made in the way business is conducted in the telecommunications industry.

RUS Form 545 incorporates those changes into the Central Office Equipment Contract. The main changes to the contract are new requirements that: (1) Provide for a software license, (2) provide for patent, copyright, and trademark infringement protection, (3) provide a cap on consequential damages, and (4) provide Equal Employment Opportunity requirements. In addition, it revises and updates provisions for (1) delivery of equipment, (2) inspection and testing of the completed installations, (3) payments to

the contractor, (4) insurance, (5) liquidated damages, and (6) completion of the project. The above actions will make it possible for RUS telecommunications borrowers to continue to provide their subscribers with the most modern and efficient telecommunications service, implemented in a predictable and orderly fashion.

A proposed rule was issued in the **Federal Register**, on December 11, 1998, at 63 FR 68406, requesting comments on these changes and proposed to codify revised RUS Form 545 in full text. The comment period closed February 9, 1999, and no comments were received.

Following the issuance of this proposed rule, a direct final rule was published in the **Federal Register** on February 10, 1999, at 64 FR 6501, establishing new policy on the manner in which RUS publishes the standard forms of contracts that borrowers are required to use when contracting for construction, procurement, engineering services, or architectural services financed through loans made or guaranteed by RUS. This form falls under this new policy. The full text will not be codified in this rule. Borrowers can determine the appropriate standard forms based on the issuance date of the form as identified by the most recent published list set forth in § 1755.30(c). A copy of RUS Form 545 can be obtained from the Rural Utilities Service, U.S. Department of Agriculture, Program Development and Regulatory Analysis, Stop 1522, Washington, DC, 20250–1522.

RUS has issued a series of 7 CFR chapter XVII parts, which serve to implement the policies, procedures, and requirements for administering its loan and loan guarantee programs and the loan documents and security instruments that provide for and secure RUS financing. The revision to 7 CFR part 1755 revises the issuance date of RUS Form 545, Central Office Equipment Contract (Not Including Installation). RUS telecommunications borrowers are required to use the RUS Form 545 contract where major central office facilities are being procured but not installed under this contract. The present RUS Form 545 has become outdated due to technological advancements and other reasons. Advanced technology and equipment concepts have introduced new issues. Contract terms and obligations have been modified and updated to more accurately reflect present business practices.

List of Subjects in 7 CFR Part 1755

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set out in the preamble, Chapter XVII of Title 7 of the Code of Federal Regulations is amended as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT, AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 7941 *et seq.*

2. Section 1755.30(c)(41) is revised to read as follows:

§ 1755. 30 List of telecommunications standard contract forms.

* * * * *

(c) * * *

(41) RUS Form 545, issued November 4, 1999, Central Office Equipment Contract (Not Including Installation).

* * * * *

Dated: September 27, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–25720 Filed 10–4–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–39]

Modification of Class D Airspace; Belleville, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Belleville, IL. This action amends the effective hours of the Class D surface area to coincide with the airport traffic control tower (ATCT) hours of operation for Scott AFB/MidAmerica Airport. The purpose of this action is to clarify when two-way radio communication with the ATCT is required.

EFFECTIVE DATE: 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, July 7, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class D airspace at Belleville, IL (64 FR 36630). The proposal was to amend the effective hours to coincide with the ATCT hours of operations for Scott AFB/MidAmerica airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class D airspace at Belleville, IL, by amending the hours of operation of the Class D airspace for Scott AFB/MidAmerica Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 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 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AGL IL D Belleville, IL [Revised]

Scott AFB/MidAmerica Airport, IL
(Lat. 38°32′41″ N., long. 89°50′ 01″ W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within an 4.8-mile radius of the Scott AFB/MidAmerica Airport. 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.

* * * * *

Issued in Des Plaines, Illinois on September 7, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–25860 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–40]

Modification of Class A Airspace; Hayward, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Hayward, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 02, and a GPS SIAP to Rwy 20, have been developed for Sawyer County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, July 13, 1999, the FAA proposed to amend 14 CFR part 711 to modify Class E airspace at Hayward, WI (64 FR 37716). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Hayward, WI, to accommodate aircraft executing the proposed GPS Rwy 02 SIAP and the GPS Rwy 20 SIAP at Sawyer County Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AGL WI E5 Hayward, WI [Revised]

Hayward, Sawyer County Airport, WI
(Lat. 46°01′33″ N., long. 91°26′39″ W.)
Hayward VOR/DME
(Lat. 46°01′08″ N., long. 91°26′47″ W.)

That airspace extending upward from 700 feet above the surface within an 6.5-mile radius of the Sawyer County Airport, and within 3.7 miles each side of the Hayward VOR/DME 205° radial extending from the 6.5-mile radius to 9.4 miles southwest of the VOR/DME, and within 2.5 miles each side of the Hayward VOR/DME 022° radial extending from the 6.5-mile radius to 7.9 miles northeast of the VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on September 17, 1999.

David B. Johnson,

Acting Member, Air Traffic Division.

[FR Doc. 99–25854 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–41]

Modification of Class E Airspace; Cable Union, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Cable Union, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 34 has been developed for Cable Union Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action decreases the radius of the existing controlled airspace and redefines a portion of the existing controlled airspace using an additional navigation facility for this airport.

EFFECTIVE DATE: 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, July 13, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Cable Union, WI (64 FR 37715). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment strongly supporting the proposal was received from the Wisconsin Department of Transportation. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Cable Union, WI, to accommodate aircraft executing the proposed GPS Rwy 34 SIAP at Cable Union Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 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, ated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

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

* * * * *

AGL WI E5 Cable Union, WI (Revised)

Cable Union Airport, WI

(Lat. 46°11′39″ N., long. 91°14′47″ W.)
Hayward VOR/DME
(Lat. 46°01′08″ N., long. 91°26′47″ W.)
Seeley NDB
(Lat. 46°06′37″ N., long. 91°23′02″ W.)

That airspace extending upward from 700 feet above the surface within an 6.4-mile radius of the Cable Union Airport, and within 3.0 miles each side of the Hayward VOR/DME 038° radial extending from the 6.4-mile radius to 10.0 miles southwest of the airport, and within 1.8 miles each side of the Seeley NDB 226° bearing extending from the 6.4-mile radius to 7.6 miles southwest of the airport, excluding that airspace within the Hayard, WI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on September 17, 1999.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 99–25852 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–10]

Establishment of Class E Airspace; St. Michael, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at St. Michael, AK. The establishment of Global Positioning System (GPS) instrument approach procedures at St. Michael Airport made this action necessary. The St. Michael Airport status changes from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). This rule provides adequate controlled airspace for aircraft flying IFR procedures at St. Michael, AK.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On July 30, 1999, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Class E airspace at St. Michael, AK, was published in the **Federal Register** (64 FR 41360). The proposal was

necessary due to the establishment of GPS instrument approaches at St. Michael, AK. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received; thus, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes the Class E airspace at St. Michael, AK, through the establishment of GPS instrument approaches. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at St. Michael, AK.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AAL AK E5 St. Michael, AK [New]

St. Michael Airport
(Lat. 62°29′24″ N., long. 162°06′37″ W.)
Fort Davis NDB
(Lat. 64°29′41″ N., long. 165°18′50″ W.)
North River NDB
(Lat. 63°54′28″ N., long. 160°48′43″ W.)

That airspace extending upward from 700 feet above the surface within 5.8-mile readius of the St. Michael Airport; and that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 63°54′30″ N long. 161°44′20″ W, to lat. 63°41′00″ N long. 161°04′30″ W, to lat. 63°02′00″ N long. 162°23′05″ W, to lat. 62°50′00″ N long. 164°00′00″ W, to lat. 63°05′00″ N long. 164°00′00″ W, to the beginning point; and that airspace 4 miles northwest of a line from North River NDB to lat. 63°35′44″ N long. 161°44′03″ W; and that airspace 4 miles either side of a line from Fort Davis NDB to lat 63°22′14″ N long. 162°33′13″ W; and that airspace 4 miles either side of a line from Fort Davis NDB to lat. 63°41′11″ N long. 162°02′50″ W; excluding that airspace within the Nome, AK, Class E airspace area.

* * * * *

Issued in Anchorage, AK, on September 28, 1999.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–25850 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–11]

Establishment of Class E Airspace; Platinum, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Platinum, AK. The establishment of a Global Positioning System (GPS) instrument approach procedure at Platinum Airport made this action necessary. The Platinum Airport status changes from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). This rule provides adequate controlled airspace for aircraft flying IFR procedures at Platinum, AK.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On July 30, 1999, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Platinum, AK, was published in the **Federal Register** (64 FR 41359). The proposal was necessary due to the establishment of a GPS instrument approach to runway (RWY) 06 and RWY 24 at Platinum, AK. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received. The Kipnuk VOR and the Togiak NDB coordinates however, were published with errors. The Knipnuk VOR coordinates should read ''lat. 59°56′34″ N., long. 164°02′04″ W.'' and the Togiak NDB coordinates should read, ''lat. 59°03′51″ N., long. 160°22′27″ W.'' The Federal Aviation Administration has determined that these changes are editorial in nature and will not increase the scope of this rule. Except for the non-substantive change just discussed, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes the Class E airspace at Platinum, AK, through the establishment of a GPS instrument approach. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Platinum, AK.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AAL AK E5 Platinum, AK [New]

Platinum Airport
(Lat. 59°00′41″ N., long. 161°49′11″ W.)
Togiak NDB
(Lat. 59°03′51″ N., long. 160°22′27″ W.)
Kipnuk VOR
(Lat. 59°56′34″ N., long. 164°02′04″ W.)
Oscarville NDB
(Lat. 60°47′29″ N., long. 161°52′22″ W.)

That airspace extending upward from 700 feet above the surface within 5.5-mile radius of the Platinum Airport; and that airspace extending upward from 1,200 feet above the surface 4 miles either side of a line from the Togiak NDB to lat. 59°19′00″ N. long. 161°52′00″ W., and 4 miles either side of a line from Kipnuk VOR to lat. 59°19′00″ N. long. 161°52′00″ W., and 4 miles either side of a line from Oscarville NDB to lat. 59°19′00″ N. long. 161°52′00″ W., and 4 miles either side of a line extending from lat. 59°19′00″ N. long. 161° 52′00″ W. to lat. 59°09′58″ N. long 161°57′39″ W. to lat. 59°05′27″ N. long. 161°53′31″ W.

* * * * *

Issued in Anchorage, AK, on September 28, 1999.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–25849 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–9]

Establishment of Class E Airspace; Mountain Village, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Mountain Village, AK. The establishment of Global Positioning System (GPS) instrument approach procedures at Mountain Village Airport made this action necessary. The Mountain Village Airport status changes from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). This rule provides adequate controlled airspace for aircraft flying IFR procedures at Mountain Village, AK.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On July 30, 1999, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Class E airspace at Mountain Village, AK, was published in the **Federal Register** (64 FR 41362). The proposal was necessary due to the establishment of GPS instrument approaches at Mountain Village, AK. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received; thus, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes the Class E airspace at Mountain Village, AK, through the establishment of GPS instrument approaches. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Mountain Village, AK.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive

Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

Mountain Village Airport [New]

(Lat. 62°05′43″ N., long. 163°40′55″ W.)

That airspace extending upward from 700 feet above the surface within 6.3-mile radius of the Mountain Village Airport and that airspace extending upward from 1,200 feet above the surface within 35 miles southeast of the airport extending clockwise from the 139° radial to the 310° radial, excluding that airspace within the St. Marys, AK, Class E airspace area.

* * * * *

Issued in Anchorage, AK, on September 28, 1999.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–25848 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–7]

Establishment of Class E Airspace; Aniak, AK; Establishment of Class E Airspace; St. Mary's, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E (surface area) airspace at Aniak, AK, and St. Mary's, AK. This action is at the request of air taxi operators with flight operations at these airports. This rule provides additional Class E airspace for aircraft flying Instrument Flight Rules (IFR) procedures at Aniak, AK, and St. Mary's, AK.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On March 16, 1999, the FAA initiated Airspace Study 99–AAL–022–NR, Proposal to Establish Surface Areas at Aniak and St. Mary's Airports, at the request from Pen Air, Northern Air Cargo, and Arctic Transportation Services to consider the establishment of additional controlled Class E Airspace. These additional controlled Class E airspaces would provide surface areas for aircraft flying IFR at the Aniak and St. Mary's airports.

Concerns expressed included: (1) It is disconcerting to be on an IFR approach knowing that Visual Flight Rule (VFR) aircraft may be in close proximity when the transition is made from IFR to VFR for landing; (2) aircraft are not required to talk on the Common Traffic Advisory Frequency (CTAF); (3) aircraft on instrument approach must mix with VFR aircraft in weather conditions as low as 'clear of clouds' and 'one-mile flight visibility'; and (4) an aircraft on an IFR approach could descend through the clouds and find themselves on a collision course with uncontrolled VFR traffic.

Changes that will result for VFR pilots with the establishment of these surface areas include: (1) A requirement to maintain basic VFR weather minimums as detailed in 14 CFR part 91 section 155 (§ 91.155) established for Class E airspace to the surface consisting of three (3) statute miles visibility and cloud clearance of 500 feet below, 1,000 feet above, and 2,000 feet horizontal distance from clouds; and if the basic VFR weather minimums (§ 91.155) can not be maintained, then a pilot will be required to fly in accordance with the Special VFR weather minimums contained in § 91.157, i.e., have an Air Traffic Control (ATC) clearance.

Comments were received from Tatonduk Outfitters Limited, Tanana Air Service, and one pilot. Based on the supportive comments received during the airspace study, the FAA decided to proceed with the rulemaking process to establish surface areas at Aniak, AK, and St. Mary's, AK.

On July 30, 1999, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace areas at Aniak, AK, and St. Mary's, AK, was published in the **Federal Register** (64 FR 41363). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received; thus, the rule is adopted as written.

The areas will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas are published in paragraph 6002 of FAA Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes the Class E (surface area) airspace at Aniak, AK, and St. Mary's, AK, at the request of air taxi operators with flight operations at these airports. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide additional controlled airspace for IFR operations at Aniak, AK, and St. Mary's, AK.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It,

therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E airspace designated as surface areas

* * * * *

AAL AK E2 Aniak, AK [New]

Aniak Airport
(Lat. 61°34′54″ N., long. 159°32′35″ W.)
Aniak NDB
(Lat. 61°35′25″ N., long. 159°35′53″ W.)

Within a 4-mile radius of the Aniak Airport and within 1.5 miles each side of the 300° bearing and the 112° bearing from the Aniak NDB, extending from the 4-mile radius to 6.5 miles and within 2.8 miles each side of the Aniak NDB 229° bearing, extending from the 4-mile radius to 6.5 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AAL E2 St. Mary's, AK [New]

St. Mary's Airport, AK
(Lat. 62°03′38″ N., long. 163°18′08″ W.)
St. Mary's NDB
(Lat. 62°03′30″ N., long. 163°17′30″ W.)

Within a 4.1-mile radius of the St. Mary's Airport and within 1.5 miles west of the 339° bearing and 1.5 miles east of the 001° bearing from the St. Mary's NDB, extending from the 4.1 mile radius to 6.7 miles north of the airport and within 1.5 miles west of the 197° bearing and 1.5 miles east of the 185° bearing from the St. Mary's NDB, extending from the 4.1-mile radius to 6.7 miles south of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Anchorage, AK, on September 28, 1999.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–25847 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–14]

Establishment of Class E Airspace; Kalskag, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Kalskag, AK. The establishment of Global Positioning System (GPS) instrument approach procedures at Kalskag Airport made this action necessary. The Kalskag Airport status changes from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). This rule provides adequate controlled airspace for aircraft flying IFR procedures at Kalskag, AK.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On July 30, 1999, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Class E airspace at Kalskag, AK, was published in the **Federal Register** (64 FR 41357). The proposal was necessary due to the establishment of GPS instrument approaches at Kalskag, AK. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received. The airspace description, however, should read ''excluding that airspace within the Aniak, AK, Class E area'' not the St. Mary's Class E area.'' The Federal Aviation Administration has determined that this change is editorial in nature and will not increase the scope of this rule. Except for the non-substantive change just discussed, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes the Class E airspace at Kalskag, AK, through the establishment of GPS instrument approaches. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Kalskag, AK.

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

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AAL AK E5 Kalskag, AK [New]

Kalskag Airport
(Lat. 61°32′11″ N., long. 160°20′29″ W.)

That airspace extending upward from 700 feet above the surface within 6.8-mile radius of the Kalskag Airport, excluding that airspace within Aniak, AK, Class E airspace area.

* * * * *

Issued in Anchorage, AK, on September 28, 1999.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–25846 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–18]

Revision of Class E Airspace; Georgetown, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Georgetown, TX. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), at Georgetown Municipal Airport, Georgetown, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Georgetown Municipal Airport, Georgetown, TX.

DATES: Effective 0901 UTC, December 30, 1999. Comments must be received on or before November 19, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–18, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Georgetown, TX. The development of a GPS SIAP, at Georgetown Municipal Airport, Georgetown, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Georgetown Municipal Airport, Georgetown, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ASW–18.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this 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) 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. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ASW TX E5 Georgetown, TX [Revised]

Georgetown Municipal Airport, Georgetown, TX
(Lat. 30°40′46″ N., long. 97°40′46″ W.)
Georgetown NDB
(Lat. 30°41′04″ N., long. 97°40′48″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Georgetown Municipal Airport and within 2.5 miles each side of the 359° bearing from the Georgetown NDB extending from the 6.5-mile radius to 7.4 miles north of the airport and within 2.2 miles each side of the 301° bearing from the airport extending from the 6.5-mile radius to 9.7 miles northwest of the airport.

* * * * *

Issued in Fort Worth, TX on September 14, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–25861 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR part 71

[Airspace Docket No. 99–ASW–20]

Revision of Class E Airspace; Mineral Wells, TX.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Mineral Wells, TX. The development of a Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP), at Mineral Wells Airport, Mineral Wells, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Mineral Wells Airport, Mineral Wells, TX.

DATES: Effective 0901 UTC, December 30, 1999. Comments must be received on or before November 19, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–20, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Mineral Wells, TX. The development of a NDB SIAP, at Mineral Wells Airport, Mineral Wells, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Mineral Wells Airport, Mineral Wells, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ASW–20.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this 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) 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. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999 and effective September 16, 1999, is amended as follows:

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

* * * * *

ASW TX ES Mineral Wells, TX [Revised]

Mineral Wells Airport, TX
(Lat. 32°46′56″ N., long. 98°03′40″ W.)
Mineral Wells NDB
(Lat. 32°47′07″ N., long. 98°03′26″ W.)
Millsap VORTAC
(Lat. 32°43′57″ N., long. 98°00′00″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Mineral Wells Airport and within 2.5 miles each side of the 145° bearing from the Mineral Wells NDB extending from the 6.5-mile radius to 7.5 miles southeast for the airport and within 2.5 miles each side of the 138° radial of the Millsap VORTAC extending from the 6.5-mile radius to 11.7 miles southeast of the airport.

* * * * *

Issued in Forth Worth, TX, on September 14, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–25859 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR part 71

[Airspace Docket No. 99–ASW–23]

Revision of Class E Airspace; Alice, TX

AGENCY: Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Alice, TX. The development of a Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP), at Kleberg County Airport, Kingsville, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Kleberg County Airport, Kingsville, TX.

DATES: Effective 0901 UTC, December 30, 1999. Comments must be received on or before November 19, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–23, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–232–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Alice, TX. The development of a NDB SIAP, at Kleberg County Airport, Kingsville, TX, has

made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Kleberg County Airport, Kingsville, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ASW–23.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this 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) 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. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.96, *Airspace Designations and Reporting Points,* dated September 1, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ASW TX E5 Alice, TX [Revised]

Alice International Airport, TX
(Lat. 27°44′27″ N., long. 98°01′38″ W.)
Orange Grove NALF, TX
(Lat. 27°54′04″ N., long. 98°03′06″ W.)
Navy Orange Grove TACAN
(Lat. 27°53′43″ N., long. 98°02′33″ W.)
Kingsville, Kleberg County Airport, TX
(Lat. 27°33′03″ N., long. 98°01′51″ W.)
Agua Dulce, Old Hoppe Place Airport, TX
(Lat. 27°48′01″ N., long. 97° 51′04″ W.)
Kleberg County NDB
(Lat. 27°36′21″ N., long. 98°05′23″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Alice International Airport and within 2 miles each side of the 135° bearing from the airport extending from the 7.5-mile radius to 9.8 miles southeast of the airport and within a 7.2-mile radius of Orange Grove NALF and within 1.6 miles each side of the 129° radial of the Navy Orange Grove TACAN extending from the 7.2-mile radius to 11.7 miles southeast of the airport and within 1.5 miles each side of the 320° radial of the Navy Orange Grove TACAN extending from the 7.2-mile radius to 9.7 miles northwest of the airport and within a 6.5-mile radius of Kleberg County Airport and within 4 miles east and 8 miles west of the 306° bearing extending from the Kleberg County NDB to 14.4 miles northwest of the airport and within a 6.3-mile radius of Old Hoppe Place Airport excluding that airspace within the Corpus Christi, TX, Class E airspace area.

* * * * *

Issued in Forth Worth, TX, on September 14, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–25858 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–21]

Revision of Class E Airspace; Falfurrias, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Falfurrias, TX. The development of a Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP), at Brooks County Airport, Falfurrias, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Brooks County Airport, Falfurrias, TX.

DATES: Effective 0901 UTC, December 30, 1999. Comments must be received on or before November 19, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–21, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Falfurrias, TX. The development of a NDB SIAP, at Brooks County Airport, Falfurrias, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Brooks County Airport, Falfurrias, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ASW–21.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this 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) 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. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ASW TX ES Falfurrias, TX [Revised]

Falfurrias, Brooks County Airport, TX
(Lat. 27°12′25″N., long. 98°07′16″W.)
Brooks County NDB
(Lat. 27°12′25″N., long. 98°07′18″W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Brooks County Airport and within 2.5 miles each side of the 177° bearing from the Brooks County NDB extending from the 6.7-mile radius to 7 miles south of the airport.

* * * * *

Issued in Fort Worth, TX, on September 14, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–25857 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–22]

Revision of Class E Airspace; Corpus Christi, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Corpus Christi, TX. The development of a Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP), at Corpus Christi International Airport, Corpus Christi, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Corpus Christi International Airport, Corpus Christi, TX.

DATES: Effective 0901 UTC, December 30, 1999. Comments must be received on or before November 19, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–22, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Corpus Christi, TX. The development of a NDB SIAP, at Corpus Christi International Airport, Corpus Christi, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Corpus Christi International Airport, Corpus Christi, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.96, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ASW–22.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this 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) 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. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854; 24 FR 9565, 3 CFR, 1959–1063 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points,* dated September 1, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ASW TX E5 Corpus Christi, TX [Revised]

Corpus Christi International Airport, TX
(Lat. 27°46′13″N., long. 97°30′04″W.)
Corpus Christi NAS, TX
(Lat. 27°41′35″N., long. 97°17′29″W.)
Nueces County Airport, TX
(Lat. 27°46′43″N., long. 97°41′26″W.)
Corpus Christi VORTAC, TX
(Lat. 26°54′14″N., long. 97°26′42″W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Corpus Christi International Airport and within 1.4 miles each side of the 200° radial of the Corpus Christi VORTAX extending from the 7.5-mile radius to 8.5 miles north of the airport and within 1.5 miles each side of the 316° bearing from the airport extending from the 7.5-mile radius to 10.1 miles northwest of the airport and within an 8.8-mile radius of Corpus Christi NAS and within a 6.2-mile radius of Nueces County Airport.

* * * * *

Issued in Fort Worth, TX, on September 14, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–25856 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, 230, 239, 240, 249 and 260

[Release Nos. 33–7745; 34–41936; International Series Release No. 1205; File No. S7–3–99]

RIN 3235–AH62

International Disclosure Standards

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting revised disclosure requirements for foreign private issuers to conform to the international disclosure standards endorsed by the International Organization of Securities Commissions in September 1998. The international disclosure standards will replace most of the non-financial statement disclosure requirements of Form 20–F, the basic disclosure document for foreign private issuers. We are revising the registration statements used by foreign private issuers under the Securities Act of 1933 to reflect the changes in Form 20–F. We also are revising the definition of ''foreign private issuer'' to give clearer guidance on how foreign companies should determine whether their shareholders are U.S. residents.

DATES: *Effective Date:* September 30, 2000.

Compliance Dates:

Registrants must comply with the revisions to Form 20–F for annual or transition reports on that form that are filed with respect to fiscal years ending on or after September 30, 2000.

Registrants eligible to incorporate information from a Form 20–F annual report must comply with the revisions to Forms F–2 and F–3 and to Form F–4 for registration statements and post-effective amendments on those forms filed for the first time after the registrant is required to file its first annual report on amended Form 20–F.

A registrant voluntarily may comply with any of the revised forms any time after September 30, 2000, but prior to the compliance date for that form.

FOR FURTHER INFORMATION CONTACT: Sandra Folsom Kinsey, Senior International Counsel, or Rani Doyle, Special Counsel, in the Office of International Corporate Finance, Division of Corporation Finance at (202) 942–2990.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Form 20–F[1] under the Securities Exchange Act of 1934.[2] As part of those amendments, we are deleting Rule 3–19 under Regulation S–X.[3] We are adopting amendments to Rule 3–20 under Regulation S–X,[4] Items 402, 404, 512, and 601 of Regulation S–K,[5] Rules 175, 434 and 463 of Regulation C,[6] Forms F–1, F–2, F–3, F–4, F–6 and S–11[7] under the Securities Act of 1933,[8] Exchange Act Rules 3b–6, 13a–10 and 15d–10,[9] and Rule 0–11 under the Trust Indenture Act of 1939[10] to conform references to the items in Form 20–F that are being revised in connection with the amendments to Form 20–F. We are adopting amendments to Rules 3–01, 3–02 and 3–12 under Regulation S–X[11] and to Item 310 of Regulation S–B[12] to eliminate references to Rule 3–19. We also are revising the definition of foreign private

[1] 17 CFR 249.220f (''Form 20–F'').

[2] 15 U.S.C. § 78a *et seq.* (the ''Exchange Act'').

[3] 17 CFR 210.3–19.

[4] 17 CFR 210.3–20.

[5] 17 CFR 229.402, 17 CFR 229.404, 17 CFR 229.512 and 17 CFR 229.601.

[6] 17 CFR 230.175, 17 CFR 230.434 and 17 CFR 230.463.

[7] *See* 17 CFR 239.31, 17 CFR 239.32, 17 CFR 239.33, 17 CFR 239.34, 17 CFR 239.36 and 17 CFR 239.18.

[8] 15 U.S.C. 77a *et seq.* (the ''Securities Act'').

[9] 17 CFR 240.3b–6, 17 CFR 240.13a–10 and 17 CFR 240.15d–10.

[10] 17 CFR 260.0–11.

[11] 17 CFR 210.3–01, 17 CFR 210.3–02, and 17 CFR 210.3–12.

[12] 17 CFR 228.310.

issuer in Securities Act Rule 405[13] and Exchange Act Rule 3b–4.[14]

I. Executive Summary

Many of our initiatives for foreign issuers have had the goal of reducing barriers to cross-border offerings and listings in the United States, while preserving or enhancing existing investor protections. In addition to our own initiatives, we, as a member of the International Organization of Securities Commissions, referred to as IOSCO, have participated in international initiatives intended to facilitate the cross-border flow of securities and capital by promoting the use of a single disclosure document that would be accepted in multiple jurisdictions. In 1998, IOSCO endorsed a core set of disclosure standards for the non-financial statement portions of a disclosure document, and encouraged its members to take whatever steps would be necessary in their own jurisdictions to accept disclosure documents prepared in accordance with those standards.[15]

We believe IOSCO's disclosure standards represent a strong international consensus on fundamental disclosure topics, and that they can be used to produce offering and listing documents that will contain the same high level of information we traditionally have required. Today we are revising our existing foreign issuer integrated disclosure system to incorporate fully the international disclosure standards. We are adopting the revisions to our foreign integrated disclosure system essentially as proposed,[16] with a few changes prompted by the suggestions of commenters. The international disclosure standards replace most, but not all, of the previous requirements of Form 20–F, the combined registration and annual report form for foreign private issuers under the Exchange Act.

We also are revising the definition of ''foreign private issuer'' found in the rules under the Securities Act and the Exchange Act, to base the definition more closely on the percentage of securities beneficially owned by U.S. residents.[17] In response to concerns raised by commenters, we have modified the proposed definition to give issuers clearer guidance on how to calculate the amount of their voting securities held by U.S. residents.

II. Background of Proposals and Commenters' Concerns

A. Background

As noted in the Proposing Release, we historically have sought to balance the information needs of investors with the public interest served by opportunities to invest in a variety of securities, including foreign securities.[18] Technological advances have made it easier than ever for investors to learn about and invest in foreign companies. Because of the increasing flow of capital across borders, we and other securities regulators around the world have an interest in ensuring that a high level of information is available to investors in all markets. For this reason, we have been actively involved in IOSCO's efforts to develop a set of high quality international disclosure standards that could be used in cross-border offerings and listings. We support international initiatives that raise the level and quality of information available to investors, facilitate the cross-border flow of capital and reduce the regulatory burdens on foreign issuers, if those initiatives do so in a manner that is consistent with our mandate to protect investors. We believe the international disclosure standards endorsed by IOSCO achieve those goals and that the best way to promote use of the standards is to incorporate them fully into our existing foreign issuer integrated disclosure system.[19]

B. Comments Regarding International Disclosure Standards

We received fifteen comment letters on the Proposing Release.[20] All of the comment letters expressed support for increasing international harmonization of disclosure standards and many expressed support for the proposed amendments. The letters from organizations representing users of issuer information, such as analysts and institutional investors, were particularly supportive. These commenters viewed the proposal as a means for promoting harmonization and improving comparability, without compromising the level of information provided by foreign registrants. Several commenters who expressed support for international harmonization of disclosure standards placed even greater importance on achieving harmonization in the area of international accounting standards. As we noted in the Proposing Release, the development of international accounting standards currently is the subject of a separate project by IOSCO.[21] Some of the commenters had helpful suggestions for incorporating the international disclosure standards into our foreign integrated disclosure system and for clarifying the instructions to Form 20–F, and we have adopted many of these suggestions in the final amendments.

A few commenters urged us to evaluate the extent to which other jurisdictions accept the international disclosure standards before we take steps to revise our rules. They suggested that the international disclosure standards be available as an optional, alternative disclosure system, rather than being mandatory for all foreign registrants.[22] These and other commenters tended to view the proposed amendments to Form 20–F as significantly increasing the disclosure burden for foreign registrants, and they predicted that imposing these requirements would deter foreign issuers from offering securities or listing in the United States. One commenter suggested that the revisions would penalize foreign registrants who had entered the U.S. market under the prior rules, and proposed that the over 1,100 reporting foreign issuers be ''grandfathered'' and allowed to continue using the disclosure standards in effect before these amendments.

As noted in the Proposing Release, we do not view the amendments to the foreign integrated disclosure system as resulting in a significant increase in the information foreign issuers must

[13] 17 CFR 230.405.

[14] 17 CFR 240.3b–4.

[15] You can find the full text of the standards endorsed by IOSCO on the IOSCO Internet Web site <http://www.iosco.org>.

[16] Securities Act Release No. 7637 (Feb. 2, 1999) [64 FR 2661] (the ''Proposing Release'').

[17] *See* Securities Act Rule 405, 17 CFR 230.405, and Exchange Act Rule 3b–4, 17 CFR 240.3b–4.

[18] Securities Act Release No. 6360 (Nov. 20, 1981) [46 FR 58511].

[19] As noted in the Proposing Release, we have preserved the original wording of the international disclosure standards to the maximum extent possible. We think this approach will promote consistent use of the standards and will help foreign issuers recognize them as a national version of the IOSCO standards accepted in other jurisdictions. Upon adoption, the international disclosure standards become part of the U.S. federal securities laws, as we noted in the Proposing Release. The standards have not been adopted on a mutual recognition basis with any other jurisdiction, and there will be no change in our current procedures and practices for reviewing and commenting on filed documents.

[20] You may read and copy the comment letters and the staff's summary of these letters in our Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. Ask for File No. S7–3–99. You may view the comment letters that were submitted by electronic mail at the Commission's web site: www.sec.gov.

[21] See Proposing Release at n. 24.

[22] One commenter held the opposite view. See the comment letter, dated June 5, 1999, submitted by the Federation of European Stock Exchanges, which stated that ''[t]he Federation strongly supports the rejection of the alternative of creating a two-tiered system of disclosure requirements. The confusion created by an alternative approach would endanger the very essence of the proposals by IOSCO.''

disclose.[23] In the few cases where the international disclosure standards ask for information not previously required by Form 20–F, we understand that the information is required under the domestic disclosure requirements in many other jurisdictions.[24] Much of the information that is new to Form 20–F's disclosure requirements, therefore, is likely to be disclosed routinely by companies in countries outside the United States. In some cases, companies already may provide information required under the amendments to Form 20–F because of our general requirement to provide additional material information.[25]

In some cases, changes in the wording of requirements may create the impression that different or additional disclosure is required. We understand that changes in wording may create uncertainty among practitioners who are familiar with the prior phrasing and are unsure how to interpret different expressions of what is intended to be essentially the same requirement. One commenter urged us to identify disclosure requirements that use different wording but that are not intended to impose different substantive disclosure requirements. Although it is not possible to identify every example, we have tried to bear that concern in mind in our more detailed explanation of the amendments we are adopting today.

With respect to the suggestion that we delay adopting the international disclosure standards until we see how widely they are accepted, or that we implement them on a voluntary basis, we do not believe that those approaches would achieve our goal of promoting regulatory harmonization at a high level of disclosure.[26] We understand that some of the more developed capital markets represented in IOSCO either have agreed to accept, or are planning to accept, disclosure documents prepared using the international disclosure standards in cross-border offerings and listings. For example, the London Stock Exchange has advised us that it currently would accept disclosure documents based on the international disclosure standards, and, as part of its annual revision of its listing rules, it will be codifying that position in its rules. Some IOSCO jurisdictions have adopted the standards for domestic purposes; we understand that is the case in Argentina, Italy and Mexico. We think that by moving quickly to incorporate the international disclosure standards into our foreign registration system, we demonstrate our strong support for high quality international standards and encourage other jurisdictions to follow suit. As one of the largest capital markets, we believe our support is important for widespread acceptance and implementation of the standards.

In the Proposing Release we explained that we had considered but rejected the alternative of a two-tiered registration system for foreign issuers. We continue to believe that any elective approach would add unnecessary complexity to our registration system, when our preference is for measures that promote regulatory simplification. For the same reason—and because, as explained above, we do not view the international disclosure standards as imposing a significant additional disclosure burden—we do not plan to ''grandfather'' the existing foreign reporting companies.

We believe the lengthy effective dates for the revised rules and forms will allow time to confirm that there is international support for the standards. The delayed effective dates also provide a transition period that should be particularly helpful for registrants adapting to a new disclosure form. For example, as explained later in this release, issuers filing registration statements on Form 20–F or Form F–1 will not use the revised forms until September 30, 2000, and repeat issuers filing registration statements on Forms F–2, F–3 or F–4 will have an even longer transition period. Annual reports on revised Form 20–F will not be due until March 31, 2001 at the earliest, for those companies with September 30 fiscal year ends. Companies with December 31 fiscal year ends will not be required to file an annual report on revised Form 20–F until June 30, 2001, almost two years from the date of this release.

C. Comments Regarding Elimination of Rule 3–19

As we explained in the Proposing Release, we are eliminating Rule 3–19 of Regulation S–X, which specifies the content, age and other requirements for foreign issuer financial statements, because the requirements of the rule are addressed in new Item 8 of Form 20–F. The only substantive change relates to the permitted age of financial statements. Item 8 of Form 20–F requires that audited financial statements be no older than 15 months at ''the time of the offering or listing,'' which means the effective date of the registration statement, rather than the 18 months permitted under Rule 3–19. In the case of the issuer's initial public offering, the audited financial statements also must be as of a date not older than 12 months at the time the offering document is filed. This stricter rule for initial public offerings does not apply to foreign issuers offering securities in the United States for the first time if they already are public in their home country.[27] Item 8 also provides that if the date of a registration statement is more than nine months after the end of the issuer's last fiscal year, the registration statement must contain interim financial statements, including U.S. GAAP information, covering at least the first six months of the issuer's fiscal year. This information may be unaudited.

Some commenters pointed out that business history, market factors and industry practices often cause foreign issuers to prepare financial statements that are more current than required. These commenters did not believe the proposal to shorten the age of financial statements requirement would have significant practical effect on many issuers. One commenter approved of requiring more current financial information and urged us to consider accelerating further the filing deadlines

[23] Several commenters supported this view, noting in one case that ''while the format of the IOSCO disclosure standards differs somewhat from the current format of Form 20–F, the overall of disclosure required is not significantly different.'' See Rogers & Wells client memorandum, dated February 1999, submitted as a comment letter. another commenter expressed the view that ''New Form 20–F is generally comparable in quality to the disclosure requirements currently applicable to foreign private issuers.'' See Cleary, Gottlieb, Steen & Hamilton comment letter, dated May 18, 1999.

[24] In its comment letter dated June 15, 1999, the Federation of European Stock Exchanges expressed its members' support for the proposal and for efforts to create an ''international passport'' that would reduce the burden of different regulatory requirements while preserving investor protection and promoting transparency. In explaining its support, the Federation noted that some of the requirements in amended Form 20–F are equivalent to current and planned disclosure requirements for most European countries.

[25] 17 CFR 230.408 and 17 CFR 240.12b–20.

[26] The Federation of European Stock Exchanges specifically noted that maintaining alternative disclosure standards would be inconsistent with the concept of regulatory simplification and the goals of the amendments. See Federation of European Stock Exchanges letter dated June 15, 1999.

[27] Since many foreign issuers already are public companies when they file their first registration statement in the United States, we believe the 12-month rule will apply only in very limited circumstances. Even in those circumstances, we will consider waiving the requirement if the issuer represents adequately to the staff that no jurisdiction outside the United States imposes the 12-month requirement on the registrant's offering and that complying with the requirement is impracticable or presents undue hardship. If we waive the 12-month requirement, issuers would be instructed to comply with the 15-month age of financial statement requirement of Item 8.A.

for annual reports of foreign registrants. On the other hand, several commenters expressed the view that the proposed change would unduly burden foreign issuers. These commenters pointed out that foreign issuers often need additional time to prepare a reconciliation to U.S. GAAP after they have finished preparing their primary financial statements.

We believe that the 15-month audited financial statement requirement is in line with the requirements in other countries and is not an undue burden on a company seeking to offer securities in the United States. In most cases, companies have the ability to control the timing of their offerings so as to reduce the impact of this shorter age requirement. We believe the 15-month period is sufficient time to prepare a reconciliation to U.S. GAAP along with the financial statements. We also hesitate to factor in extra time for a company to prepare a reconciliation to U.S. GAAP, because this requirement affects companies in different ways. Whether or not there are any reconciling items to be reported—and the number and extent of those items—depends, among other things, on a company's business activities during the period covered by the financial statements, on how similar the accounting standards used in preparing the primary financial statements are to U.S. GAAP, and on the way in which the company has chosen to apply those accounting standards in preparing its primary financial statements. For some companies, the burden is not significant.

Some commenters argued that the ''blackout'' period resulting from the new age of financial statements requirements and the current six-month due date for annual reports on Form 20–F would pose a particular hardship for issuers who are in the market more or less continuously, as in the case of rights offerings, dividend or interest reinvestment plans, and offerings of securities upon conversion or exercise of outstanding securities. We already have distinguished these types of offerings in certain respects, such as by permitting the financial statements in prospectuses for these types of offerings to be reconciled to U.S. GAAP in accordance with Item 17, rather than Item 18, of Form 20–F. Because the blackout period may be particularly disruptive for these types of offerings, we have amended the instructions to Item 8.A.5 to replace the 15-month requirement for these types of offerings with an 18-month requirement and to replace the nine-month interim financial statements requirement with a 12-month requirement, which mirror the previous requirements for those types of offerings. We expect to reconsider this accommodation in the future, however, and may propose reducing the permitted age of financial statements for these types of offerings based on a review of its operation in practice or a possible change in the due date for annual reports.[28]

D. Specific Changes to Registration and Report Forms

Form 20–F is used as an initial registration statement under the Exchange Act and as an annual report form for foreign private issuers required to file annual reports pursuant to Section 13 or 15(d) of the Exchange Act. The amendments to Form 20–F adopted today replace prior Items 1—14 of Form 20–F, excluding Item 9A, with ten new items that track the wording of the IOSCO disclosure standards. The item previously designated as Item 9A, Quantitative and Qualitative Disclosures about Market Risk, of Form 20–F is retained and renumbered as Item 11. The items previously designated as Item 15, Defaults Upon Senior Securities, and Item 16, Changes in Securities and Changes in Security for Registered Securities, of Form 20–F also are retained and renumbered as Items 12 and 13, and the wording has been revised to reflect ''plain English'' drafting principles. These two items continue to apply only when Form 20–F is used as an annual report form.

Items 17 and 18 of Form 20–F are retained in substance and are not renumbered; these items explain the financial statement requirements for registration statements and reports and the different types of reconciliation to U.S. GAAP that must be provided by issuers who prepare financial statements using accounting principles other than U.S. GAAP. As noted in the Proposing Release, the text of old Item 18 was largely the same as the text of old Item 17; our revisions to Item 18 eliminate the redundant text and highlight the differences, but are not intended to change any substantive requirements of that Item.

The amendments adopted today also bring the exhibit requirements for foreign issuers more in line with the exhibits required for domestic issuers filing a registration statement on Form 10 or an annual report on Form 10-K. The ''Appendix A to Item 2(b)—Oil and Gas'' is amended only to correct item references; no substantive changes were made. Corresponding changes were made in the Securities Act registration statement forms that refer to Form 20–F.

Several commenters made helpful suggestions for clarifying the instructions to the ten items of the international disclosure standards or for adapting them to our existing integrated disclosure system. The ten core items are described below, together with an explanation of some of the changes from the Proposing Release. As noted, most of the ten items have been adopted as proposed.

Item 1. Identity of Directors, Senior Management and Advisors

Several commenters noted that the terms ''principal bankers and legal advisors'' and ''legal advisors to the issue'' may be confusing or raise liability issues in the United States. While these terms and the term ''sponsor'' are commonly used and well understood in some countries, they may not be used in other jurisdictions. We have revised the instructions to this item to clarify that these individuals or entities only need be identified if the issuer is required to identify them in other jurisdictions.

Item 2. Offer Statistics and Expected Timetable

One commenter noted that the timetable for a typical U.S. offering by a foreign private issuer would be very dependent on market conditions and other unpredictable factors. We would expect that in cases such as a typical, U.S.-style, firm-commitment underwritten offering, the timetable disclosure would be very brief and would likely focus more on the sequence of events than on precise dates. In other cases, such as offerings involving a complex corporate restructuring, we expect that the timetable would provide more detail and likely would include anticipated dates or elapsed periods of time for major events.

Item 3. Key Information

This item includes requirements for selected financial data, exchange rate information, the reasons for the offer and the expected use of proceeds, and information about risk factors. With respect to the Item 3.B requirement for a statement of capitalization and indebtedness, we have amended the proposed instructions to clarify that this statement is not required in annual reports, in line with current disclosure practice, and also to provide guidance

[28] See Section XI.A.2 of Securities Act Release No. 7606A (Nov. 13, 1998) [63 FR 67174]. In the Securities Act reform release we proposed accelerating the due date for Form 20–F annual reports to five months after the close of the issuer's fiscal year and solicited comment on whether the due date should be accelerated to four months.

on complying with the requirement in the case of offerings under shelf registration statements. With respect to the requirement for information on the reason for the offer and use of proceeds, found in Item 3.C, we view this item as calling for the same type of information that U.S. companies provide in response to Item 504 of Regulation S–K. With respect to Item 3.D, risk factors, one commenter suggested that attempting to limit risk factor disclosure in annual reports to ''the most significant risk factors'' was confusing and unnecessary. We agree that, in view of our recent ''plain English'' initiative and its emphasis on avoiding boilerplate risk factors, any listing of risk factors—whether in a registration statement or an annual report—should focus on the most significant risk factors as they apply to the issuer and its operations. An explicit instruction would be redundant and may create confusion. Accordingly, we have deleted this instruction.

Item 4. Information on the Company

This item includes requirements for a description of the issuer's business and properties. To the extent segment information is required, this item states that information may be presented on the same basis as that used to determine the company's business segments under the body of accounting principles used in preparing the financial statements. This statement is intended to refer to the accounting principles used in preparing the primary financial statements, not those used in preparing any required U.S. GAAP reconciliation. One commenter suggested that we continue to include the Form 20–F instructions regarding the necessity of complying with applicable Industry Guides and, for issuers in extractive industries, the need to name any independent consultants who have prepared or reviewed estimates of reserves. Following this suggestion, we have revised the instructions to Item 4 to reflect our existing instructions in this area.

Item 5. Operating and Financial Review and Prospects

This item corresponds to the current requirement for management's discussion and analysis of financial condition and results of operations. We interpret the requirements of this item as being essentially the same as those of old Item 9 of Form 20–F. We have added an instruction to clarify that, as was the case under old Item 9, this section of the registration statement or report should discuss any aspect of the U.S. GAAP reconciliation and U.S. GAAP differences that the registrant believes is necessary for an understanding of the financial statements as a whole. In response to comments asking us to clarify when information must be provided with respect to inflation rates and the effects of hyperinflation, we have added an instruction to provide additional guidance.

Item 6. Directors, Senior Management and Employees

This item includes requirements relating to compensation and shareholdings for directors and management. The definition of the term ''administrative, supervisory or management bodies'' in Form 20–F's Glossary states that this term corresponds to ''executive officers'' in the United States. Two commenters suggested that this attempt at clarification could create confusion, because in some countries the members of these bodies may not perform the same functions as executive officers in U.S. companies. In response to this concern, we have deleted the clarification and added an instruction stating that the meaning of these terms will depend on the functions performed.

Several commenters noted that Item 6 requires disclosure of the amount of shares held by individual directors and management, without the alternative previously available under old Item 5 of Form 20–F of providing this information on an aggregate basis. We believe that the international disclosure standards reflect a consensus that the individual share ownership of management provides important information for investors. However, we have added an instruction indicating that if an individual member of management beneficially owns less than 1% of the outstanding securities, that fact may be stated instead of providing the specific number of shares that individual beneficially owns, as long as the specific number of shares is not otherwise disclosed or required to be disclosed in a non-U.S. jurisdiction. This mirrors the approach taken in Item 403 of Regulation S–K for U.S. issuers.

Item 7. Major Shareholders and Related Party Transactions

This item requires disclosure of information about major shareholders and others that control or may control the company, as well as disclosure of related party transactions. At the request of one commenter, we have added an instruction similar to Instruction 3 to Item 404(c) of Regulation S–K, to clarify the extent to which banks and other lending institutions must disclose loans made in the ordinary course of business. Item 7 reduces the Form 20–F threshold for disclosure of beneficial ownership from 10% to 5%, and the commenters that mentioned this change generally expressed support.

Item 8. Financial Information

This item contains requirements relating to the presentation of financial statements, requirements that previously were set forth in Rule 3–19 of Regulation S–X, and requirements relating to legal proceedings. The only change we are making to Regulation S–X is the elimination of Rule 3–19; the remaining items of Regulation S–X continue to apply to registration statements and reports filed by foreign private issuers to the same extent they did before these amendments to Form 20–F were adopted. With respect to the provisions of Item 8.A.5 that relate to financial information published by the issuer that is more current than the financial statements required in the filing, some commenters expressed concern that these provisions expand on the requirements of Rule 3–19(f) or change the reconciliation requirement for this type of information. This was not the intention, and we have revised the instructions in an attempt to eliminate any confusion on this point.[29] We also have added an instruction clarifying that in order to comply with the requirement for three years of audited financial statements, the issuer is not required to provide a balance sheet for the earliest of these periods if it is not required in a jurisdiction outside the United States.

Two commenters asked if the statement in the Item 8 instructions and in the General Instructions, that financial statements must be audited in accordance with U.S. generally accepted auditing standards, was intended to change the staff's practice of accepting auditor's reports that state that the audit was conducted in accordance with local auditing standards that are ''substantially similar'' or ''similar in all material respects'' to U.S. GAAS. As one commenter noted, that practice was adopted to accommodate audit report styles in different jurisdictions that differ from the audit report wording specified by U.S. GAAS. The practice was not intended to relieve the auditor of the responsibility to perform all auditing procedures necessary under U.S. GAAS. We do not intend to change our practice of accepting wording variations in audit reports to comply with local reporting formats. In all other

[29] There also is no change in the reconciliation requirement for interim information presented in selected financial data.

respects, however, in order to avoid ambiguity, the report must say that the audit was performed in accordance with U.S. GAAS.

Item 9. The Offer and Listing

This item includes requirements for a description of the offering, including the plan of distribution, trading markets, selling shareholders, dilution and expenses. Item 9.A requires disclosure of how the offering price was determined if there is no established market for the securities being offered. We view this requirement as being equivalent to the requirement of Item 505 of Regulation S–K. One commenter pointed out that the requirement in Item 9.B.1 for the underwriters' addresses could create logistical problems in U.S.-style offerings where the syndicate members are not decided until final pricing. In those circumstances, however, an issuer may comply with this requirement by disclosing only the addresses of the lead underwriters, which should be known before pricing. Generally speaking, for a U.S.-style, firm commitment underwritten offering, we would expect that the responses to Item 9.B, Plan of Distribution, would include much of the same information provided in response to Item 508 of Regulation S–K, to the extent that information is material to an investor's understanding of the offering.

Item 10. Additional Information

This item includes requirements for, among other things, a description of the issuer's share capital, significant provisions of its articles of incorporation and bylaws, its material contracts, and applicable taxes. One commenter suggested that certain requirements of Item 10, specifically subsections 10.A (Share Capital), 10.E (Taxation) and 10.F (Dividends and Paying Agents), be limited to registration statements and annual reports relating only to equity securities, since that information is inapplicable to other types of securities, or would otherwise be disclosed in the issuer's financial statements or in response to Item 10.B, Memorandum and Articles of Association. After considering this comment and the prior requirements of Form 20–F, we agree that the information called for by Item 10.A and 10.F is less pertinent to non-equity securities and to annual reports, and we have amended the item to limit these requirements to registration statements relating to equity securities.

E. ''Foreign Private Issuer'' Definition

We are adopting the proposed amendments to Rule 405 under the Securities Act and Rule 3b–4 under the Exchange Act, which contain the definition of ''foreign private issuer,'' essentially in the form proposed, with some additional clarification. The amendments, in effect, change the test of whether more than 50 percent of an issuer's outstanding voting securities are held by residents of the United States from a record ownership test to one that more closely reflects the beneficial ownership of the issuer's securities.[30] As noted in the Proposing Release, we believe that the increased prevalence of offshore nominees and custodial accounts has made record ownership less meaningful for purposes of determining U.S. ownership. We believe a test based more closely on beneficial ownership gives a better picture of whether or not a company incorporated outside the United States is entitled to the accommodations available to foreign private issuers under the federal securities laws. The ownership test adopted today is based on the method of calculation used in Exchange Act Rule 12g3–2(a), which follows the definition of ''securities held of record'' in Rule 12g5–1, but requires the issuer to ''look through'' the record ownership of brokers, dealers, banks or nominees holding securities for the accounts of their customers to determine the residency of those customers. Issuers also must take into account information regarding U.S. ownership derived from beneficial ownership reports that are provided to the issuer or filed publicly, as well as information that otherwise is provided to the issuer. The reference to beneficial ownership reports is not limited to reports filed with the Commission, since we understand that beneficial ownership of an issuer's securities may be required to be provided to the issuer or disclosed publicly in other countries, as well as in the United States.

Several commenters suggested that these changes would create a substantial burden for companies that trade in many different markets, and that widely held companies would have to devote significant effort and expense in determining beneficial ownership in many jurisdictions where the likelihood of finding U.S. owners is small. In order to address these concerns, we have limited the application of the ''look through'' provisions of Rule 12g3–2(a) to voting securities held of record:

- In the United States,
- In the issuer's home jurisdiction, and
- In the primary trading market for the issuer's securities if different from the issuer's home jurisdiction.

These jurisdictions should cover most of the trading volume for the issuer's securities, and searches in these jurisdictions are likely to yield the greatest number of U.S. beneficial owners. This modification to the test should reduce the burden on foreign companies while still producing a reasonably accurate picture of whether or not the company is a foreign private issuer.

Most commenters questioned the basis for our proposed rebuttable presumption that, if a foreign issuer's securities trade in the U.S. markets in the form of American Depositary Receipts, or ADRs, the shares deposited in the ADR program are held solely by U.S. residents. These commenters pointed out that, for a number of reasons, non-U.S. investors may choose to hold securities in ADR form. Because it appears that issuers will not take advantage of the presumption and will feel the need to query ADR depositaries regarding the owners of ADRs, we have determined not to adopt the presumption.

Some commenters pointed out that it is not always possible for issuers to obtain information about separate customer accounts, as required by Rule 12g3–2(a). Brokers, dealers, banks or other nominees may be unwilling or unable to provide information about their customer accounts. This problem is not unique to the foreign private issuer definition, however; the duty to inquire about separate customer accounts already exists for issuers deciding whether the reporting exemption in Rule 12g3–2(a) is available. In the case of the foreign private issuer definition, the issuer would not be asking nominees to provide the number of U.S. shareholders or the names of those shareholders, but only the percentage of the nominee's holdings of the issuer's securities that are represented by U.S. accounts. If after reasonable inquiry, however, the issuer is unable to obtain information about the nominee's customer accounts, including cases where the nominee's charge for supplying this information would be unreasonable, the issuer may rely on a presumption that the customer accounts are held in the nominee's principal place of business. We have

[30] There are two parts to the foreign private issuer definition. The first part is based on ownership of the issuer's securities. The second part of the definition is based on whether (a) a majority of the issuer's executive officers or directors are U.S. citizens or residents, (b) over 50% of its assets are within the United States, or (c) its business is administered principally in the United States. Any one of these three factors, together with majority U.S. ownership, will mean the issuer fails to satisfy the foreign private issuer definition.

revised the instructions to the foreign private issuer definition to clarify this point.

III. Effective Dates and Transition Provisions

The amendments to rules and forms adopted today become effective September 30, 2000, with certain exceptions. In some cases, as explained below, the date at which a registrant will have to comply with a revised form will depend on that registrant's fiscal year end.

- *Registration statements filed on Form F–1, Form F–4 or Form 20–F*—Registrants must use revised Form F–1 and revised Form 20-F for registration statements first filed on or after September 30, 2000.[31] Registrants that are not eligible to incorporate Form F–4 information by reference to a previously filed annual report on Form 20–F also must use revised Form F–4 for registration statements filed on or after September 30, 2000.
- *Registration statements filed on Forms F–2 and F–3 and on Form F–4 if it permits information to be incorporated by reference*—These forms permit a registrant to satisfy form requirements by incorporating information from an annual report on Form 20–F. Form F–4 also permits the registrant to incorporate information about the other party to a business combination by referring to that company's annual report. The revised Forms F–2, F–3 and F–4 do not provide for incorporation of information by reference to ''old'' Form 20–F. Accordingly, the revisions to Forms F–2 and F–3 will be effective for registration statements and post-effective amendments filed any time after a registrant is required to file its first annual report on revised Form 20–F. In cases where a Form F–4 permits information about either party to the business combination to be incorporated by reference to an annual report on Form 20–F, the revisions to Form F–4 will be effective for registration statements and post-effective amendments filed any time after the party whose information is being incorporated by reference is required to file its first annual report on Form 20–F.
- *Annual reports filed on Form 20–F*—Revised Form 20–F must be used for annual or transition reports filed with respect to fiscal years ending on or after September 30, 2000.
- *Rule 3–19*—Rule 3–19 of Regulation S–X will no longer apply to registration statements filed on or after September 30, 2000 that are filed on Form F–1 or on a Form F–4 that permits incorporation of information by reference. A registrant may continue to rely on Rule 3–19 for registration statements filed on Forms F–2 and F–3, and on a Form F–4 that permits incorporation of information by reference, until the revisions to those forms take effect.

The following information applies to situations that arise when registrants make the transition from the old version of a form to the revised version:

- *Pre-effective amendments*—If, on September 30, 2000, a foreign private issuer has on file at the Commission a registration statement on Form F–1, a Form F–4 that does not permit incorporation by reference or Form 20–F and that registration statement has not been declared effective, the issuer may continue to file pre-effective amendments to that registration statement after September 30, 2000 without modifying those pre-effective amendments to reflect the revisions. This position does not apply to pre-effective amendments to registration statements on Forms F–2, Form F–3 or a Form F–4 that permits incorporation by reference, because registrants will have a lengthy transition period and experience preparing an annual report on revised Form 20–F, before they have to comply with the revisions to those Securities Act registration statements.
- *Post-effective amendments*—The revisions to registration statement forms adopted today apply to post-effective amendments filed on or after the effective date given above for a particular form if the post-effective amendment is to include the registrant's latest audited financial statements or to update the prospectus under Section 10(a)(3).[32]
- *Registration statements and post-effective amendments filed under Rules 462 (b) and (c)*—Registration statements and post-effective amendments filed under Rules 462 (b) and (c) are effective upon filing with the Commission. These registration statements and amendments must comply with the registration statement revisions adopted today only if the registrant first filed the underlying registration statement on or after the effective date given above for a particular form.
- *Prospectus supplements*—The revisions to registration statement forms adopted today apply to prospectus supplements filed on or after the effective date given above for a particular form. If an issuer filed a base prospectus under Rule 415(a)(1)(x) before it was required to comply with revised Form F–3, that base prospectus does not have to be amended, even though subsequent prospectus supplements must comply with the revised form.

Registrants are encouraged to use the revised forms for registration statements and annual reports on a voluntary basis before the compliance dates described above. A registrant that wishes to use revised Forms F–2, F–3 or F–4 before it has filed its first annual report on revised Form 20–F may do so. In those cases, however, the registrant either will have to amend its previously filed annual report to comply with the new disclosure requirements of Form 20–F or provide within the body of the Securities Act registration statement the information it would otherwise incorporate from Form 20–F.

IV. Cost-Benefit Analysis

The amendments update and simplify the disclosure requirements for foreign private issuers. We believe the amendments will make it easier for foreign private issuers to raise capital and list their securities in multiple jurisdictions, including the United States. In addition, as other jurisdictions adopt or accept the international standards, U.S. issuers desiring to raise capital in multiple foreign markets will enjoy the benefits of harmonization.

Foreign issuers seeking to raise capital or list securities in more than one jurisdiction often encounter differing, and in some cases conflicting, regulatory requirements. These regulatory hurdles may influence issuers' decisions about where to offer or list their securities. A primary goal of the amendments to Form 20–F is to encourage and facilitate the use of one disclosure document by issuers seeking to raise capital or list securities in multiple jurisdictions. The amendments provide the benefits of lowering regulatory barriers to cross-border offerings and listings with the result of reduced regulatory costs and burdens. The amendments will bring us closer to the goal of enabling issuers to prepare one basic disclosure document that will be accepted in many jurisdictions. Although some tailoring of the disclosure document may be required to satisfy specific national requirements, issuers and investors will benefit from greater uniformity in the requirements for core disclosure topics.

The amendments impose some additional disclosure requirements on foreign private issuers. However, we believe that the benefits of the amendments—to issuers and investors—justify possible costs. As we stated in the proposing release, we believe the IOSCO standards incorporated into amended Form 20–F are generally comparable to the prior disclosure requirements of Form 20–F and that foreign private issuers should not experience significantly increased compliance costs. Some commenters, including attorneys in private practice informally contacted by the staff of the Office of International Corporate Finance, have concurred with our view. They acknowledge that the disclosure requirements in amended Form 20–F are comparable to the Form's previous disclosure requirements and would not, in practice, result in significant additional or quantifiable compliance costs.

We recognize that shortening the age of financial statements requirement may present burdens for some foreign private

[31] Forms F–6 and S–11 under the Securities Act were revised to conform cross-references to Form 20–F. The changes to these forms also are effective for forms first filed on or after September 30, 2000.

[32] 15 U.S.C. 77j(a)(3).

issuers. We believe that the transparency benefits to investors of the availability of more current information justifies the potential burdens of the new requirements. Indeed, several commenters expressed their belief that the amendments will increase transparency, ensure a high level of investor protection and enhance the comparability of disclosures between foreign and domestic issuers. In addition, in conversations with practitioners, many indicated that they did not expect the new Form 20–F requirements to impact their clients adversely, because the market already demands more current financial information from offerors than presently required. For these issuers, no new burden will exist. Moreover, in response to concerns raised by some commenters, the final amendments relax the age of financial statement requirements for continuous offerings, diminishing the burdens potentially associated with the new timing requirements. Furthermore, in many offerings, issuers have flexibility to determine the timing of their filings and may be able to plan their offerings to accommodate the requirements. Accordingly, the Commission does not believe that foreign private issuers should experience a significant quantifiable burden in complying with the amendments.

There are other reasons to conclude that the benefits of the amendments, which will accrue both to investors and to issuers, will justify the costs. First, the purpose of the amendments is to facilitate cross-border offerings and listings. We believe the amendments will encourage other jurisdictions to endorse or adopt the IOSCO standards, and widespread acceptance of the standards will further reduce compliance burdens for foreign issuers, as well as for U.S. issuers seeking capital abroad.

Second, we, as well as some commenters, expect additional compliance costs will be mitigated because a significant number of foreign private issuers already comply, for various reasons, with the additional disclosure requirements in the amended Form. For instance:

- Foreign issuers often provide the additional information that is required by the amended Form in order to successfully market their securities or attract investors, or in response to our general materiality requirements.
- As one commenter noted, some of the new requirements, including those related to age of financial statements, 5% beneficial ownership disclosure, and expanded compensation-related disclosure, are equivalent or comparable to disclosure requirements that currently are or will soon be mandated in many European jurisdictions.
- Other countries, such as Argentina, Italy and Mexico, are adopting IOSCO's international disclosure standards for their domestic issuer disclosure requirements. As regulators move further in the direction of harmonized standards, we expect more jurisdictions to endorse and more foreign issuers to comply with the IOSCO standards.

Third, not all of the disclosure requirements of the amended Form will apply to all foreign private issuers; some requirements are based, as with old Form 20–F, on foreign requirements. In these instances, disclosure will not be required under the amended Form unless a foreign private issuer is required to disclose information in another jurisdiction or makes the requested information public on a voluntary basis.

Finally, the amendments are scheduled to take effect gradually, beginning more than one year from adoption, at the earliest. This schedule will give foreign private issuers a significant amount of time to familiarize themselves with the amendments and to set up cost-effective procedures, as necessary, to comply with the amendments. We believe this will allow foreign issuers to plan and minimize any compliance costs.

Some commenters expressed concern that the amendments to change the definition of ''foreign private issuer'' under the Exchange Act and the Securities Act would impose significant compliance costs. We believe the new requirements are beneficial to the integrity of our regulatory system, which provides accommodations for foreign issuers because of the unique difficulties they face in entering a foreign regulatory regime. The amendments provide a more accurate portrayal of whether a company incorporated outside the United States is the type of entity for whom the special rules and forms for foreign private issuers were intended.

In response to concerns expressed by commenters about the costs associated with the amendments, we have determined to adopt a more focused ''look through'' requirement that will reduce issuer costs and capture most U.S. ownership information. We believe that the benefits of accurate issuer categorization justify the additional costs a company incorporated outside the United States may bear in determining whether it is entitled to the accommodations available to foreign private issuers.

In sum, we expect the amendments to revise Form 20–F, accelerate the age of financial statements requirements, and revise the definition of foreign private issuers, will impose transitional costs on foreign private issuers, but after a transitional period, we believe those costs will become much less significant. We believe those costs are justified in light of the benefits the amendments will provide to issuers, investors and the markets.

V. Consideration of Burdens on Competition, and Promotion of Efficiency, Competition and Capital Formation

Form 20–F is used by foreign private issuers as an initial registration statement and as an annual report form under the Exchange Act. The amendments to Form 20–F and related forms and rules should encourage and facilitate the use of one disclosure document that would meet the regulatory requirements of multiple jurisdictions. The Commission sought but did not receive any comments related to whether the amendments would promote efficiency, competition or capital formation, or have anti-competitive effects. Under Section 2(b) of the Securities Act and 3(f) of the Exchange Act, the Commission considered whether the amendments would promote competition, cross-border capital formation, and efficiency in multi-jurisdictional offerings and listings. Moreover, the amendments adopted today reflect the Commission's consideration, as required by Section 23(a) of the Exchange Act, of the impact the amendments may have on competition. The amendments are designed to harmonize disclosure requirements for foreign issuers, without imposing any negative impact on U.S. businesses. Therefore, the Commission believes that any burden on competition imposed by the amendments is necessary or appropriate in furtherance of the purposes of the Exchange Act.

VI. Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (15 U.S.C. § 605(b)), the Chairman of the Commission certified at the proposal stage that the revisions to rules and forms will not have a significant impact on a substantial number of small entities. We received no comments specifically addressing the certification. A copy of the certification was attached as Appendix A to the Proposing Release.

VII. Paperwork Reduction Act

The amendments affect Form 20–F, which contains ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995.[33] The title for the collection of information is ''Form 20–F.'' Providing the information required by Form 20–F is mandatory for foreign private issuers required to register securities or offerings with the Commission, and the information collected will not be kept confidential.

The amendments will affect changes to collections of information within the Paperwork Reduction Act. The collections of information would be required by amended Form 20–F. Most of the disclosure requirements of amended Form 20–F closely correspond to the Form's previous disclosure requirements. The new requirements of the amended Form are based on common national requirements in other countries, as identified by IOSCO. For these reasons, we do not expect filers of the amended Form 20–F to experience a long-term quantifiable change in their information collection burdens. In the short term, we expect that foreign private issuers will spend time reviewing Form 20–F to become familiar with its amended format and requirements, and as necessary, implement measures to comply with additional disclosure requirements. The adopted rule is substantially similar to the proposed rules with respect to the collection of information requirements. Changes from the proposed Form were undertaken in response to comment letters and principally are clarifications.

The information collection burden is not readily quantifiable for several reasons:

- Some of the new disclosure requirements are not triggered unless the Form 20–F filer has a disclosure obligation under foreign law;
- Different issuers will need more or less time to become familiar with the amendments;
- Some foreign private issuers already disclose voluntarily the information that is required by the amendments.

Once all Form 20–F filers familiarize themselves with the amended Form, we believe the burden hours will revert to the current information collection burden estimate. In the longer term, as more jurisdictions endorse and accept the IOSCO standards, we believe that the burden estimate may decrease as the differences between U.S. standards and foreign standards are reduced.

We determined the number of burden hours by estimating the number of hours it would take for an average foreign private issuer to: (1) become familiar with the amendments; (2) make an initial filing on amended Form 20–F and/or related amended Securities Act forms; and (3), file subsequent registration statements or reports using amended Form 20–F standards. It is our estimate that the average foreign private issuer initially would need 20 hours to understand the amendments and another 10 to implement them. We believe this 30 hour burden will decrease significantly after the first time a foreign private issuer complies with the amendments.

In addition to the transition burden, the average foreign private issuer would need 451 hours annually to file an amended Form 20–F or amended Securities Act form that incorporated Form 20–F standards. To reach this number, we relied on the total annual burden hour estimate submitted in connection with Form 20–F to the Office of Management and Budget, referred to as OMB, in 1996. The resulting estimate is significantly less than the 1,995 burden hours set forth in the Proposing Release for these amendments, which upon further review, we determined was inaccurate. We solicited but did not receive any comments on this estimate. In subsequent years, we expect the annual burden to revert to 451 hours per response. We estimate that there would be 1,007 respondents to Form 20–F. Each respondent would respond once per year.

The Commission submitted the proposed revisions to those rules and forms to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. 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 is 3235–0288. The revised forms and regulations set forth the disclosures that the Commission will require foreign private issuers to make to the public about themselves and their securities offerings. Requests for materials submitted to OMB by the Commission with regard to the collection of information should be in writing, refer to File No. S7–3–99, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services.

VIII. Statutory Basis and Text of Amendments

The amendments to the Commission's rules and forms are adopted pursuant to Sections 2(b), 5, 6, 7, 10 and 19(a) of the Securities Act of 1933 as amended, Sections 3, 12, 13, 15 and 23 of the Securities Exchange Act of 1934, and Section 319 of the Trust Indenture Act of 1939.

List of Subjects

17 CFR Part 210

Accountants, Accounting.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small business.

17 CFR Parts 229, 239 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Advertising, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

17 CFR Part 260

Reporting and recordkeeping requirements, Securities, Trusts and trustees.

Text of the Amendments

In accordance with the foregoing, the Securities and Exchange Commission amends Title 17, chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–1, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), unless otherwise noted.

§ 210.3–19 [Removed]

2. By removing and reserving § 210.3–19.

§ 210.3–20 [Amended]

3. Amend § 210.3–20 in the last sentence of paragraph (d) by removing the words ''Items 17(c)(2) or 18(c)(2) of'' and adding, in their place, the words ''Item 17(c)(2) of''.

4. By removing in 17 CFR Part 210 the words ''§ 210.3–19'' and adding, in their place, the words ''Item 8.A of Form 20–

[33] 44 U.S.C. §§ 3501 *et seq.*

F (§ 249.220 of this chapter)'' in the following places:

a. Section 210.3–01(h); and

b. Section 210.3–02(d).

§ 210.3–12 [Amended]

5. Amend § 210.3–12 in paragraph (f) by removing the words ''specified in § 210.3–19. Financial statements of a foreign business which are furnished pursuant to §§ 210.3–05 or 210.3–09 because it is an acquired business or a 50 percent or less owned person may be of the age specified in § 210.3–19.'' and adding, in their place, the words ''specified in Item 8.A of Form 20–F (§ 249.220f of this chapter). Financial statements of a foreign business which are furnished pursuant to §§ 210.3–05 or 210.3–09 because it is an acquired business or a 50 percent or less owned person may be of the age specified in Item 8.A of Form 20–F.''

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

6. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

§ 228.310 [Amended]

7. Amend the first sentence in Note 2 of § 228.310 by removing the words ''Articles 3–19 and 3–20 (17 CFR 210.3–19 and 210.3–20)'' and adding, in their place, the words ''Item 8.A of Form 20–F (17 CFR 249.220f) and Article 3–20 of Regulation S–X (17 CFR 210.3–20)''.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

8. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

§ 229.402 [Amended]

9. Amend § 229.402(a)(1)(ii) by removing the words ''Items 11 and 12 of Form 20–F [17 CFR 249.220f]'' and adding, in their place, the words ''Items 6.B. and 6.E.2. of Form 20–F (17 CFR 249.220f)''.

10. Amend § 229.404 by revising paragraph 3 of Instructions to Item 404 to read as follows:

§ 229.404 (Item 404) Certain relationships and related transactions.

* * * * *

Instructions to Item 404.

* * * * *

3. A foreign private issuer will be deemed to comply with Item 404 if it provides the information required by Item 7.B of Form 20–F (17 CFR 249.220f).

§ 229.512 [Amended]

11. Amend § 229.512 in the first sentence of paragraph (a)(4) by removing the words ''§ 210.3–19 of this chapter'' and adding, in their place, the words ''Item 8.A. of Form 20–F (17 CFR 249.220f)''.

§ 229.601 [Amended]

12. Amend § 229.601 in paragraph (b)(10)(iii)(B)(*5*) by removing the words ''Item 11 of Form 20–F'' and adding, in their place, the words ''Item 6.B. of Form 20–F (§ 249.220f of this chapter)''.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

13. The authority citation for part 230 continue to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.175 [Amended]

14. Amend § 230.175 by removing in paragraph (b)(2)(i) the words ''or Item 9 of Form 20–F (§ 249.220f of this chapter) 'Management's discussion and analysis of financial condition and results of operations,' '' and adding, in their place, the words ''Management's Discussion and Analysis of Financial Condition and Results of Operations, or Item 5 of Form 20–F, Operating and Financial Review and Prospects, (§ 249.220f of this chapter)''; by removing in paragraph (c)(3) the words ''Item 9 of Form 20–F'' and adding, in their place, the words ''Item 5 of Form 20–F''.

15. By amending § 230.405 by revising the definition of ''foreign private issuer'' to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Foreign private issuer. The term *foreign private issuer* means any foreign issuer other than a foreign government except an issuer meeting the following conditions:

(1) More than 50 percent of the outstanding voting securities of such issuer are directly or indirectly owned of record by residents of the United States; and

(2) Any of the following:

(i) The majority of the executive officers or directors are United States citizens or residents;

(ii) More than 50 percent of the assets of the issuer are located in the United States; or

(iii) The business of the issuer is administered principally in the United States.

Instructions to paragraph (1) of this definition: To determine the percentage of outstanding voting securities held by U.S. residents:

A. Use the method of calculating record ownership in Rule 12g3–2(a) under the Exchange Act (§ 240.12g3–2(a) of this chapter), except that your inquiry as to the amount of shares represented by accounts of customers resident in the United States may be limited to brokers, dealers, banks and other nominees located in:

(1) The United States,

(2) Your jurisdiction of incorporation, and

(3) The jurisdiction that is the primary trading market for your voting securities, if different than your jurisdiction of incorporation.

B. If, after reasonable inquiry, you are unable to obtain information about the amount of shares represented by accounts of customers resident in the United States, you may assume, for purposes of this definition, that the customers are residents of the jurisdiction in which the nominee has its principal place of business.

C. Count shares of voting securities beneficially owned by residents of the United States as reported on reports of beneficial ownership that are provided to you or publicly filed and based on information otherwise provided to you.

* * * * *

16. Amend § 230.434 by revising paragraph (c)(3)(i) to read as set forth below; and by removing in paragraph (c)(3)(ii) the words ''Item 11 of Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter)'' and adding, in their place, the words ''Item 11 of Form S–3 or Item 5 of Form F–3 (§ 239.13 or § 239.33 of this chapter)''.

§ 230.434 Prospectus delivery requirements in firm commitment underwritten offerings of securities for cash.

* * * * *

(c) * * *

(3) * * *

(i) The description of securities required by Item 202 of Regulations S–K (§ 229.202 of this chapter) or by Items 9, 10 and 12 of Form 20–F (§ 249.220f of this chapter) as applicable, or a fair and accurate summary thereof; and

* * * * *

§ 230.463 [Amended]

17. Amend § 230.463 by removing in paragraph (a) the words ''Item 16(e)'' and adding, in their place, the words ''Item 14(e)''.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

18. The general authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

19. Amend General Instruction E. to Form S–11 (referenced in § 239.18) by removing the words ''Items 3, 4, 10, 11 and 18, respectively, of Form 20–F'' and adding, in their place, the words ''Items 6, 7.A, 8.A.7, and 18 of Form 20–F''.

Note: The text of Form S–11 does not and this amendment will not appear in the Code of Federal Regulations.

20. Amend Form F–1 (referenced in § 239.31) by removing in General Instruction III the words ''the information that would be required by Item 11'' and adding in their place the words ''the information which would be required by Item 4''; by removing in General Instruction III the words ''called for by Item 9'' and adding in their place the words ''called for by Items 10.A and 10.B of Form 20–F or Item 12 of Form 20–F, as applicable''; by removing Items 4 through 10 and 13; by redesignating Items 11, 12, 14, 15, 16, and 17 as Items 4, 5, 6, 7, 8, and 9; by revising the caption for newly designated Item 4 to read ''Information with Respect to the Registrant and the Offering''; by removing in newly designated Item 4(b) the words ''Pursuant to Item 16'' and adding, in their place, the words ''Pursuant to Item 8''; and, by removing in newly designated Item 8(b) the words ''and Item 11(b) of this Form'' and adding, in their place, the words ''and Item 4(b) of this Form''.

21. Amend Form F–1 (referenced in § 239.31) the Instructions As To Summary Prospectuses section by redesignating paragraphs 1.(c), 1.(d), 1.(e), 1.(f), 1.(g) and 1.(h) as paragraphs 1.(c)(i), 1.(c)(ii), 1.(c)(iii), 1.(c)(iv), 1.(c)(v) and 1.(d); by removing in newly designated paragraph 1.(c)(i) the words ''As to Item 4, a'' and adding, in their place, ''A''; by removing in newly designated paragraph 1.(c)(ii) the words ''As to Item 7, a'' and adding, in their place, ''A''; by removing in newly designated paragraph 1.(c)(iii) the words ''As to Item 8, a'' and adding, in their place, ''A''; by removing in newly designated paragraph 1.(c)(iv) the words ''As to Item 9, a'' and adding, in their place, ''A''; by removing in newly designated paragraph 1.(c)(v) the words ''As to Item 11, a brief statement of the general character of the business done and intended to be done, the Selected Financial Data (Item 8 of Form 20–F (§ 249.220f of this chapter))'' and adding, in their place, the words ''As to Item 4, a brief statement of the general character of the business done and intended to be done, the Selected Financial Data (Item 3.A of Form 20–F (§ 249.220f of this chapter))''; by removing in paragraph 3 the words ''that information as to Items 9 and 11 specified in paragraphs (f) and (g) above'' and adding, in their place, the words ''that information specified in paragraphs 1.(c)(iv) and 1.(c)(v) above''.

Note: The text of Form F–1 does not and this amendment will not appear in the Code of Federal Regulations.

22. Amend Form F–2 (referenced in § 239.32) by removing Items 4 through 10 and 14; by adding new Item 4 to read as follows; by redesignating Items 11, 12, 13, 15, 16, and 17 as Items 5, 6, 7, 8, 9, and 10; by removing in newly designated Item 5(b)(1) the words ''pursuant to Item 12'' and adding, in their place, the words ''pursuant to Item 6''; by removing in newly designated Item 5(b)(2) the words ''accordance with Item 12 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule'' and adding, in their place, the words ''accordance with Item 6 are not sufficiently current to comply with the requirements of Item 8.A of Form 20–F, financial statements necessary to comply with that Item''; and, by removing in the caption of the Note to newly designated Item 6 the words ''Item 12(a)'' and adding, in their place, the words ''Item 6(a)''.

Note: The text of Form F–2 does not and this amendment will not appear in the Code of Federal Regulations.

Securities and Exchange Commission, Washington D.C. 20549

Form F–2—Registration Statement Under the Securities Act of 1933

* * * * *

Item 4. Information About the Offering

Furnish the information about the offering required by the following items of Form 20–F: Item 2 (Offer Statistics and Expected Timetable), Item 3.B (Capitalization and Indebtedness), Item 3.C (Reasons for the Offer and Use of Proceeds), Item 7.C (Interests of Experts and Counsel), Item 10 (The Offer and Listing) and Item 12 (Description of Securities Other than Equity Securities). You do not have to repeat in the prospectus any information called for by these items if the same information is contained in a report being incorporated by reference into this registration statement.

* * * * *

23. Amend Form F–2 (referenced in § 239.32) the Instructions As To Summary Prospectuses section by redesignating paragraphs 1.(c), 1.(d), 1.(e), 1.(f), 1.(g) and 1.(h) as paragraphs 1.(c)(i), 1.(c)(ii), 1.(c)(iii), 1.(c)(iv), 1.(c)(v) and 1.(d); by removing in newly designated paragraph 1.(c)(i) the words ''As to Item 4, a'' and adding, in their place, ''A''; by removing in newly designated paragraph 1.(c)(ii) the words ''As to Item 7, a'' and adding, in their place, ''A''; by removing in newly designated paragraph 1.(c)(iii) the words ''As to Item 8, the'' and adding, in their place, ''The''; by removing in newly designated paragraph 1.(c)(iv) the words ''As to Item 9, a'' and adding, in their place, ''A''; and, by removing in newly designated paragraph 1.(c)(v) the words ''As to Item 12, a brief statement of the general character of the business done and intended to be done, the Selected Financial Data (Item 8 of Form 20–F (§ 249.220f of this chapter)'' and adding, in their place, the words ''A brief statement of the general character of the business done and intended to be done, the Selected Financial Data (Item 3.A of Form 20–F (§ 249.220f of this chapter)''.

24. Amend Form F–3 (referenced in § 239.33) by removing Items 4 through 10 and 14; by adding new Item 4 to read as follows; by redesignating Items 11, 12, 13, 15, 16, and 17 as Items 5, 6, 7, 8, 9, and 10; in newly designated Item 5 remove the words ''Item 12'' and add, in their place, the words ''Item 6'' in the following places: twice in Item 5(a), once in Item 5(b)(1), and once in Item 5(b)(2); by removing in newly designated Item 5(b)(1) the words ''Form 8–K'' and adding, in their place, the words ''Form 6–K''; by removing in newly designated Item 5(b)(2) the words ''Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule'' and adding, in their place, the words ''Item 8.A. of Form 20–F, financial statements necessary to comply with that Item''; and by removing in the caption of the Note to newly designated Item 6 the words ''Item 12(d)'' and adding, in their place, the words ''Item 6(d)''.

Note: The text of Form F–3 does not and this amendment will not appear in the Code of Federal Regulations.

Securities and Exchange Commission

Form F–3, Registration Statement Under the Securities Act of 1933

* * * * *

Item 4. Information About the Offering

Furnish the information about the offering required by the following items of Form 20–F: Item 2 (Offer Statistics and Expected Timetable), Item 3.B (Capitalization and Indebtedness), Item 3.C (Reasons for the Offer and Use of Proceeds), Item 7.C (Interests of Experts and Counsel), Item 10 (The Offer and Listing) and Item 12 (Description of Securities Other than Equity Securities). You do not have to repeat in the prospectus any information called for by these items if the same information is contained in a report being incorporated by reference into this registration statement.

* * * * *

25. Amend Form F–4 (referenced in § 239.34) by removing the words ''Item 4 of Form 20–F'' and adding, in their place, the words ''Item 7.A. of Form 20–F'' in the following places:

a. The Instruction following Item 18(a)(5)(ii); and

b. the Instruction following Item 19(a)(5).

26. Amend Form F–4 (referenced in § 239.34) by removing the words ''Item 5 of Form 20–F'' and adding, in their place, the words ''Item 9.A.4. of Form 20–F'' in the following places:

a. Instruction 2. to Item 11;

b. Item 12(a)(5);

c. Item 12(b)(3)(viii);

d. Instruction 2. to Item 13;

e. Item 14(i); and

f. Item 17(b)(2).

27. Amend Item 12(b)(3)(iii) of Form F–4 (referenced in § 239.34) by removing the words ''Item 6 of Form 20–F, exchange controls and other limitations on security holders'' and adding, in their place, the words ''Item 10.D. of Form 20–F, exchange controls''.

28. Amend Item 14(d) of Form F–4 (referenced in § 239.34) by removing the words ''Item 6 of Form 20–F, exchange controls and other limitations affecting security holders'' and adding, in their place, the words ''Item 10.D. of Form 20–F, exchange controls''.

29. Amend Form F–4 (referenced in § 239.34) by removing the words ''Item 8 of Form 20–F'' and adding, in their place, the words ''Item 3.A. of Form 20–F'' in the following places:

a. Item 3(d), 3(e), 3(f)(1), 3(f)(2), 3(f)(3);

b. Item 12(b)(3)(v);

c. Item 14(f); and

d. Item 17(b)(3);

30. Amend Form F–4 (referenced in § 239.34) by removing the words ''Item 9 of Form 20–F, management's discussion and analysis of financial condition and results of operations'' and adding, in their place, the words ''Item 5 of Form 20–F, operating and financial review'' in the following places:

a. Item 12(b)(3)(vi)(A);

b. Item 14(g)(1); and

c. Item 17(b)(4)(i).

31. Amend Form F–4 (referenced in § 239.34) by removing the words ''Item 9A of Form 20–F'' and adding, in their place, the words ''Item 11 of Form 20–F'' in the following places:

a. Item 12(b)(3)(vi)(B);

b. Item 14(g)(2); and

c. Item 17(b)(4)(ii).

32. Amend Item 18(a)(7)(i) of Form F–4 (referenced in § 239.34) by removing the words ''Item 10 of Form 20–F, directors and officers of registrant'' and adding, in their place, the words ''Item 6.A. of Form 20–F, directors and senior management of the registrant''.

33. Amend Item 19(a)(7)(i) of Form F–4 (referenced in § 239.34) by removing the words ''Item 10 of Form 20–F, directors and officers of the registrant: and adding, in their place, the words ''Item 6.A. of Form 20–F, directors and senior management of the registrant''.

34. Amend Form F–4 (referenced in § 239.34) by removing the words ''Items 11 and 12 of Form 20–F, remuneration and options'' and adding, in their place, the words ''Items 6.B. and 6.E. of Form20–F, compensation and share ownership'' in the following places:

a. Item 18(a)(7)(ii); and

b. Item 19(a)(7)(ii).

35. Amend Form F–4 (referenced in § 239.34) by removing the words ''Item 13 of Form 20–F, interest of management in certain transactions'' and adding, in their place, the words ''Item 7.B. of Form 20–F, related party transactions'' in the following places:

a. Item 18(a)(7)(iii); and

b. Item 19(a)(7)(iii).

36. Amend Form F–4 (referenced in § 239.34) by removing the words ''Rule 3–19 of Regulation S–X (210.3–19 of this chapter)'' or ''Rule 3–19 to Regulation S–X'' or ''Rule 3–19 of Regulation S–X'' and adding, in their place, the words ''Item 8.A. of Form 20–F'' in the following places:

a. Item 10(b);

b. Instruction 2 to Item 11;

c. Items 12(a)(2), (a)(5), (b)(2)(i), and (b)(3)(viii);

d. Instruction 2 to Item 13;

e. Item 14(i);

f. the Instructions following Item 14(i); and

g. Items 17(b)(2) and 17(b)(6).

37. Amend Item 3 of Form F–4 (referenced in § 239.34) by removing in Instruction 2. to *Instructions to paragraphs (e) and (f)* the words ''Instruction 7 to Item 8 of Form 20–F'' and adding, in their place, the words ''The Instructions to Item 3.A. of Form 20–F''.

38. Amend Item 4(a)(3) of Form F–4 (referenced in § 239.34) by removing the words ''Item 202 of Regulation S–K (§ 229.202 of this chapter)'' and adding, in their place, the words ''Items 10.A and 10.B of Form 20–F or Item 12 of Form 20–F, as applicable''.

39. Amend Item 7(a) of Form F–4 (referenced in § 239.34) by removing the words ''Item 507 of Regulation S–K (§ 229.507 of this chapter)'' and adding, in their place, the words ''Item 9.D. of Form 20–F (§ 249.220f of this chapter)''.

40. Amend Item 8 of Form F–4 (referenced in § 239.34) by removing the words ''Item 509 of Regulation S–K (§ 229.509 of this chapter)'' and adding, in their place, the words ''Item 7.C. of Form 20–F (§ 249.220f of this chapter)''.

41. Amend Item 12 of Form F–4 (referenced in § 239.34) by removing in Item 12(a)(2) the words ''Item 9 of Form 20–F'' and adding, in their place, the words ''Item 5 of Form 20–F''; by removing in Item 12(b)(1) the words ''Items 1 and 2 of Form 20–F'' and adding, in their place, the words ''Item 4 of Form 20–F''; by removing in Item 12(b)(3)(i) the words ''Items 1(a)(3) and (a)(4) of Form 20–F'' and adding, in their place, the words ''Items 4.B., 4.B.2., and 4.B.5. of Form 20–F''; by removing in Item 12(b)(3)(ii) the words ''Item 2 of Form 20–F'' and adding, in their place, the words ''Item 4.D. of Form 20–F''; by removing in Item 12(b)(3)(iv) the words ''Item 7 of Form 20–F'' and adding, in their place, the words ''Item 10.E of Form 20–F''; and by removing in Item 12(b)(3)(v) the words ''Item 8 of Form 20–F'' and adding, in their place, the words ''Item 3.A. of Form 20–F''.

42. Amend Item 14 of Form F–4 (referenced in § 239.34) by removing in Item 14(a) the words ''Item 1 of Form 20–F, description of business'' and adding, in their place, the words ''Items 4.A., 4.B., and 4.C of Form 20–F, information on the company''; by removing in Item 14(b) the words ''Item 2 of Form 20–F, description of property'' and adding, in their place, the words ''Item 4.D. of Form 20–F, property, plant and equipment''; by removing in Item 14(c) words ''Item 3 of Form 20–F'' and adding, in their place, the words ''Item 8.A.7. of Form 20–F''; by removing in Item 14(e) words ''Item 7 of Form 20–F'' and adding, in their place, the words ''Item 10.E. of Form 20–F''.

Note: The text of Form F–4 does not and this amendment will not appear in the Code of Federal Regulations.

43. Revise Item 1 of Form F–6 (referenced in § 239.36) to read as follows:

Note: The text of Form F–6 does not and this amendment will not appear in the Code of Federal Regulations.

Securities and Exchange Commission

Form F–6, Registration Statement Under the Securities Act of 1933 For Depositary Shares Evidenced by American Depositary Receipts

* * * * *

Item 1. Description of Securities To Be Registered

Furnish the information required by Item 12.E. of Form 20–F (§ 249.22 of this chapter).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

44. The general authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

45. By amending § 240.3b–4 by revising the section heading and paragraph (c) to read as follows:

§ 240.3b–4 Definition of ''foreign government,'' ''foreign issuer'' and ''foreign private issuer''.

* * * * *

(c) The term *foreign private issuer* means any foreign issuer other than a foreign government except an issuer meeting the following conditions:

(1) More than 50 percent of the issuer's outstanding voting securities are directly or indirectly held of record by residents of the United States; and

(2) Any of the following:

(i) The majority of the executive officers or directors are United States citizens or residents;

(ii) More than 50 percent of the assets of the issuer are located in the United States; or

(iii) The business of the issuer is administered principally in the United States.

Instruction to paragraph (c)(1): To determine the percentage of outstanding voting securities held by U.S. residents:

A. Use the method of calculating record ownership in Rule 12g3–2(a) under the Act (§ 240.12g3–2(a)), except that your inquiry as to the amount of shares represented by accounts of customers resident in the United States may be limited to brokers, dealers, banks and other nominees located in:

(1) The United States,

(2) Your jurisdiction of incorporation, and

(3) The jurisdiction that is the primary trading market for your voting securities, if different than your jurisdiction of incorporation.

B. If, after reasonable inquiry, you are unable to obtain information about the amount of shares represented by accounts of customers resident in the United States, you may assume, for purposes of this definition, that the customers are residents of the jurisdiction in which the nominee has its principal place of business.

C. Count shares of voting securities beneficially owned by residents of the United States as reported on reports of beneficial ownership provided to you or filed publicly and based on information otherwise provided to you.

46. Amend § 240.3b–6 by removing in paragraph (b)(2)(i) the words ''or Item 9 of Form 20–F'' (§ 249.220f of this chapter) ''Management's discussion and analysis of financial condition and results of operations,'' and adding, in their place, the words ''Management's Discussion and Analysis of Financial Condition and Results of Operations'' or Item 5 of Form 20–F, ''Operating and Financial Review and Prospects,''; by removing in paragraph (c)(3) the words ''Item 9 of Form 20–F'' and adding, in their place, the words ''Item 5 of Form 20–F''.

47. Amend § 240.13a–10 by removing in paragraph (g)(4) the words ''responding to Items 3, 9, 15, 16, and 17 or 18'' and adding, in their place, the words ''responding to Items 5, 8.A.7., 13, 14, and 17 or 18''.

48. Amend § 240.15d–10 by removing in paragraph (g)(4) the words ''responding to Items, 3, 9, 15, 16, and 17 or 18'' and adding, in their place, the words ''responding to Items 5, 8.A.7., 13, 14, and 17 or 18''.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

49. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

50. Amend Form 20–F (referenced in § 249.220f) by revising the General Instructions; by removing Item 11; by revising Items 1 through 9, 10, 12 through 16, 18, 19 and Instructions to Exhibits to read as follows; by redesignating Item 9A as Item 11; by removing in newly designated Item 11 each time they appear the words ''Item 9A'' and adding, in their place, the words ''Item 11''; by removing in Instruction 3 to Item 17 the words ''Item 1 of Form 20–F'' and adding, in their place, the words ''Items 4.B.1 and 4.B.2 of Form 20–F''; and, by removing in the Appendix section following the Instructions As To Exhibits section each time they appear the words ''Item 2(b)'' and adding, in their place, the words ''Item 4.D''.

Note: The text of Form 20–F does not and this amendment will not appear in the Code of Federal Regulations.

United States Securities and Exchange Commission, Washington, D.C. 20549

Form 20–F

* * * * *

General Instructions

A. Who May Use Form 20–F and When It Must Be Filed

(a) Any foreign private issuer may use this form as a registration statement under Section 12 of the Securities Exchange Act of 1934 (referred to as the Exchange Act) or as an annual or transition report filed under Section 13(a) or 15(d) of the Exchange Act. A transition report is filed when an issuer changes its fiscal year end. The term ''foreign private issuer'' is defined in Rule 3b–4 under the Exchange Act.

(b) A foreign private issuer must file its annual report on this Form within six months after the end of the fiscal year covered by the report.

(c) A foreign private issuer filing a transition report on this Form must file its report in accordance with the requirements set forth in Rule 13a–10 or Rule 15d–10 under the Exchange Act that apply when an issuer changes its fiscal year end.

B. General Rules and Regulations That Apply to This Form

(a) The General Rules and Regulations under the Securities Act of 1933 (referred to as the Securities Act) contain general requirements that apply to registration on any form. Read these general requirements carefully and follow them when preparing and filing registration statements and reports on this Form.

(b) Pay particular attention to Regulation 12B under the Exchange Act. Regulation 12B contains general requirements about matters such as the kind and size of paper to be used, the legibility of the registration statement or report, the information to give in response to a requirement to state the title of securities, the language to be used and the filing of the registration statement or report.

(c) In addition to the definitions in the General Rules and Regulations under the Securities Act and the definitions in Rule 12b–2 under the Exchange Act, General Instruction F defines certain terms for purposes of this Form.

(d) Note Regulation S–X, which applies to the presentation of financial information in a registration statement or report.

C. How To Prepare Registration Statements and Reports on This Form

(a) Do not use this Form as a blank form to be filled in; use it only as a guide in the preparation of the registration statement or annual report. General Instruction E states which items must be responded to in a registration statement and which items must

be responded to in an annual report. The registration statement or report must contain the numbers and captions of all items. You may omit the text following each caption in this Form, which describes what must be disclosed under each item. Omit the text of all instructions in this Form. If an item is inapplicable or the answer to the item is in the negative, respond to the item by making a statement to that effect.

(b) Unless an item directs you to provide information as of a specific date or for a specific period, give the information in a registration statement as of a date reasonably close to the date of filing the registration statement and give the information in an annual report as of the latest practicable date.

(c) Note Exchange Act Rule 12b–20, which states: ''In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.''

(d) If the same information required by this Form also is required by the body of accounting principles used in preparing the financial statements, you may respond to an item of this Form by providing a cross-reference to the location of the information in the financial statements, in lieu of repeating the information.

(e) Note Item 10 of Regulation S–K which explains the Commission policy on projections of future economic performance and the Commission policy on securities ratings.

(f) If you are providing the information required by this Form in connection with a registration statement under the Securities Act, note that Rule 421 requires you to follow plain English drafting principles. You can find helpful information in ''A Plain English Handbook—How to create clear SEC disclosure documents'' and in staff legal bulletins supplementing the Handbook. These documents are available on our Internet website, at www.sec.gov.

D. How To File Registration Statements and Reports on This Form

File with the Commission (i) three complete copies of the registration statement or report, including financial statements, exhibits and all other papers and documents filed as part of the registration statement or report, and (ii) five additional copies of the registration statement or report, which need not contain exhibits. File at least one complete copy of the registration statement or report, including financial statements, exhibits and all other papers and documents filed as part of the registration statement or report, with each exchange on which any class of securities is or will be registered. Manually sign at least one complete copy of the registration statement or report filed with the Commission and one copy filed with each exchange. Type or print the signatures on copies that are not manually signed. See Exchange Act Rule 12b–11(d) for instructions about manual signatures and the Instructions as to Exhibits of this Form for instructions about signatures pursuant to powers of attorney.

Registration statements and reports are filed with the Commission by sending or delivering them to our File Desk between the hours of 9:00 a.m. and 5:30 p.m., Washington, D.C. time. The File Desk is closed on weekends and federal holidays. If you file a registration statement or report by mail or by any means other than hand delivery, the address is U.S. Securities and Exchange Commission, Attention: File Desk, 450 Fifth Street, N.W., Washington, D.C. 20549. We consider documents to be filed on the date our File Desk receives them. We do not require foreign private issuers to file registration statements and reports under our Electronic Data Gathering and Retrieval System (EDGAR). We encourage you to use EDGAR, if possible, because documents filed through EDGAR are easily accessible by the public through the Commission's Internet Web site and through other electronic means. If you have technical questions about EDGAR or want to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. If you have questions about the EDGAR rules, call the Office of EDGAR Policy at (202) 942–2940.

E. Which Items To Respond to in Registration Statements and Annual Reports

(a) *Exchange Act Registration Statements.* A registration statement filed under the Exchange Act on this Form must include the information specified in Part I and Part III. Read the instructions to each item carefully before responding to the item. In some cases, the instructions may permit you to omit some of the information specified in certain items in Part I.

(b) *Annual Reports.* An annual report on this Form must include the information specified in Parts I, II and III. Read the instructions to each item carefully before responding to the item. In some cases, the instructions may permit you to omit some of the information specified in certain items in Part I. The instructions also may permit you to omit certain information if it was previously reported to us and has not changed. If that is the case, you do not have to file copies of the previous report with the report being filed on this Form.

(c) *Financial Statements.* An Exchange Act registration statement or annual report filed on this Form must contain the financial statements and related information specified in Item 17 of this Form. We encourage you to provide the financial statements and related information specified in Item 18 of this Form in lieu of Item 17, but the Item 18 statements and information are not required. In certain circumstances, Forms F–2, F–3 or F–4 for the registration of securities under the Securities Act require that you provide the financial statements and related information specified in Item 18 in your annual report on Form 20–F. Consult those Securities Act forms for the specific requirements and consider the potential advantages of complying with Item 18 instead of Item 17 of this Form. Note that Items 17 and 18 may require you to file financial statements of other entities in certain circumstances. These circumstances are described in Regulation S–X.

The financial statements must be audited in accordance with U.S. generally accepted auditing standards, and the auditor must comply with the U.S. standards for auditor independence. If you have any questions about these requirements, contact the Office of Chief Accountant in the Division of Corporation Finance at (202) 942–2960.

(d) *Securities Act Registration Statements.* The registration statement forms under the Securities Act direct you to provide information required by specific items of Form 20–F. Some items of Form 20–F only apply to Securities Act registration statements, and you do not have to respond to those items if you are using Form 20–F to file an Exchange Act registration statement or an annual report. The instructions to the items of Form 20–F identify which information is required only in Securities Act registration statements.

F. Definitions

The following definitions apply to various terms used in this Form, unless the context indicates otherwise.

Affiliate—An ''affiliate'' of a specified person or entity refers to one who, directly or indirectly, either controls, is controlled by or is under common control with, the specified person or entity.

Beneficial owner—The term ''beneficial owner'' of securities refers to any person who, even if not the record owner of the securities, has or shares the underlying benefits of ownership. These benefits include the power to direct the voting or the disposition of the securities or to receive the economic benefit of ownership of the securities. A person also is considered to be the ''beneficial owner'' of securities that the person has the right to acquire within 60 days by option or other agreement. Beneficial owners include persons who hold their securities through one or more trustees, brokers, agents, legal representatives or other intermediaries, or through companies in which they have a ''controlling interest,'' which means the direct or indirect power to direct the management and policies of the entity.

Company—References to the ''company'' mean the company whose securities are being offered or listed, and refer to the company on a consolidated basis unless the context indicates otherwise.

Directors and senior management—This term includes (a) the company's directors, (b) members of its administrative, supervisory or management bodies, (c) partners with unlimited liability, in the case of a limited partnership with share capital, (d) nominees to serve in any of the aforementioned positions, and (e) founders, if the company has been established for fewer than five years. The persons covered by the term ''administrative, supervisory or management bodies'' vary in different countries and, for purposes of complying with the disclosure standards, will be determined by the host country.

Document—This term covers prospectuses and offering documents used in connection with a public offering of securities and registration statements or prospectuses used in connection with the initial listing of securities.

Instruction: References to the ''document'' mean whatever type of document is being

prepared using Form 20–F disclosure requirements, including, as applicable, a prospectus, an Exchange Act registration statement, and an annual report.

Equity securities—The term ''equity securities'' includes common or ordinary shares, preferred or preference shares, options or warrants to subscribe for equity securities, and any securities, other than debt securities, which are convertible into or exercisable or redeemable for equity securities of the same company or another company. If the equity securities available upon conversion, exercise or redemption are those of another company, the disclosure standards also apply to the other company.

Group—A ''group'' is a parent and all its subsidiaries. References to a company's group mean the group of which it is a member.

Home country—This term refers to the jurisdiction in which the company is legally organized, incorporated or established and, if different, the jurisdiction where it has its principal listing.

Host country—This term refers to jurisdictions, other than the home country, in which the company is seeking to offer, register or list its securities.

Instruction: Note that, as used in this Form, the term ''host country'' means the United States and its territories.

Pre-emptive issue—The term ''pre-emptive issue'' and references to ''pre-emptive purchase rights'' refer to offerings made to the company's existing shareholders in order to permit them to maintain their pro rata ownership in the company.

Part I

Item 1. Identity of Directors, Senior Management and Advisers

The purpose of this standard is to identify the company representatives and other individuals involved in the company's listing or registration.

A. *Directors and senior management.* Provide the names, business addresses and functions of the company's directors and senior management.

B. *Advisers.* Provide the names and addresses of the company's principal bankers and legal advisers to the extent the company has a continuing relationship with such entities, the sponsor for listing (where required by the host country regulations), and the legal advisers to the issue.

C. *Auditors.* Provide the names and addresses of the company's auditors for the preceding three years (together with their membership in a professional body).

Instructions to Item 1: If you are filing Form 20–F as an annual report under the Exchange Act, you do not have to provide the information called for by Item 1. You must provide this information, to the extent applicable, if you are filing a registration statement under either the Securities Act or the Exchange Act.

Instructions to Item 1.B: You only have to provide the information called for by Item 1.B if you are required to disclose the information in a jurisdiction outside the United States. These persons will not be considered ''experts'' or ''sellers'' under the Securities Act solely due to the fact that they are named in response to Item 1.B.

Item 2. Offer Statistics and Expected Timetable

The purpose of this standard is to provide key information regarding the conduct of any offering and the identification of important dates relating to that offering.

A. *Offer statistics.* For each method of offering, e.g., rights offering, general offering, etc., state the total expected amount of the issue, including the expected issue price or the method of determining the price and the number of securities expected to be issued.

B. *Method and expected timetable.* For all offerings, and separately for each group of targeted potential investors, the document shall state the following information to the extent applicable to the offering procedure:

1. The time period during which the offer will be open, and where and to whom purchase or subscription applications shall be addressed. Describe whether the purchase period may be extended or shortened, and the manner and duration of possible extensions or possible early closure or shortening of this period. Describe the manner in which the latter shall be made public. If the exact dates are not known when the document is first filed or distributed to the public, describe arrangements for announcing the final or definitive date or period.

2. Method and time limits for paying up securities; where payment is partial, the manner and dates on which amounts due are to be paid.

3. Method and time limits for delivery of equity securities (including provisional certificates, if applicable) to subscribers or purchasers.

4. In the case of pre-emptive purchase rights, the procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised.

5. A full description of the manner in which results of the distribution of securities are to be made public, and when appropriate, the manner for refunding excess amounts paid by applicants (including whether interest will be paid).

Instructions to Item 2: If you are filing Form 20–F as a registration statement or annual report under the Exchange Act, you do not have to provide the information called for by Item 2. You must provide this information if you are filing a registration statement under the Securities Act.

Item 3. Key Information

The purpose of this standard is to summarize key information about the company's financial condition, capitalization and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data also must be restated. See Item 8.

A. *Selected financial data.*

1. The company shall provide selected historical financial data regarding the company, which shall be presented for the five most recent financial years (or such shorter period that the company has been in operation), in the same currency as the financial statements. Selected financial data for either or both of the earliest two years of the five-year period may be omitted, however, if the company represents to the host country regulator that such information cannot be provided, or cannot be provided on a restated basis, without unreasonable effort or expense. If interim period financial statements are included, the selected financial data should be updated for that interim period, which may be unaudited, provided that fact is stated. If selected financial data for interim periods is provided, comparative data from the same period in the prior financial year shall also be provided, except that the requirement for comparative balance sheet data is satisfied by presenting the year end balance sheet information.

2. The selected financial data presented shall include items generally corresponding to the following, except that the specific line items presented should be expressed in the same manner as the corresponding line items in the company's financial statements. Such data shall include, at a minimum, net sales or operating revenues; income (loss) from operations; income (loss) from continuing operations; net income (loss); net income (loss) from operations per share; income (loss) from continuing operations per share; total assets; net assets; capital stock (excluding long term debt and redeemable preferred stock); number of shares as adjusted to reflect changes in capital; dividends declared per share in both the currency of the financial statements and the host country currency, including the formula used for any adjustments to dividends declared; and diluted net income per share. Per share amounts must be determined in accordance with the body of accounting principles used in preparing the financial statements.

3. Where the financial statements provided in response to Item 8 are prepared in a currency other than the currency of the host country, disclosure of the exchange rate between the financial reporting currency and the currency of the host country should be provided, using the exchange rate designated by the host country for this purpose, if any:

(a) At the latest practicable date;

(b) The high and low exchange rates for each month during the previous six months; and

(c) For the five most recent financial years and any subsequent interim period for which financial statements are presented, the average rates for each period, calculated by using the average of the exchange rates on the last day of each month during the period.

B. *Capitalization and indebtedness.* A statement of capitalization and indebtedness (distinguishing between guaranteed and unguaranteed, and secured and unsecured, indebtedness) as of a date no earlier than 60 days prior to the date of the document shall be provided showing the company's capitalization on an actual basis and, if applicable, as adjusted to reflect the sale of new securities being issued and the intended application of the net proceeds therefrom. Indebtedness also includes indirect and contingent indebtedness.

C. *Reasons for the offer and use of proceeds.*

1. The document shall disclose the estimated net amount of the proceeds broken down into each principal intended use thereof. If the anticipated proceeds will not be sufficient to fund all the proposed purposes, the order of priority of such purposes should be given, as well as the amount and sources of other funds needed. If the company has no specific plans for the proceeds, it should discuss the principal reasons for the offering.

2. If the proceeds are being used directly or indirectly to acquire assets, other than in the ordinary course of business, briefly describe the assets and their cost. If the assets will be acquired from affiliates of the company or their associates, disclose the persons from whom they will be acquired and how the cost to the company will be determined.

3. If the proceeds may or will be used to finance acquisitions of other businesses, give a brief description of such businesses and information on the status of the acquisitions.

4. If any material part of the proceeds is to be used to discharge, reduce or retire indebtedness, describe the interest rate and maturity of such indebtedness and, for indebtedness incurred within the past year, the uses to which the proceeds of such indebtedness were put.

D. *Risk factors.* The document shall prominently disclose risk factors that are specific to the company or its industry and make an offering speculative or one of high risk, in a section headed ''Risk Factors.'' Companies are encouraged, but not required, to list the risk factors in the order of their priority to the company. Among other things, such factors may include, for example: the nature of the business in which it is engaged or proposes to engage; factors relating to the countries in which it operates; the absence of profitable operations in recent periods; the financial position of the company; the possible absence of a liquid trading market for the company's securities; reliance on the expertise of management; potential dilution; unusual competitive conditions; pending expiration of material patents, trademarks or contracts; or dependence on a limited number of customers or suppliers. The Risk Factors section is intended to be a summary of more detailed discussion contained elsewhere in the document.

Instructions to Item 3:

1. If you are filing Form 20–F as an annual report under the Exchange Act, you do not have to provide the information called for by Item 3.B or 3.C. If you are filing Form 20–F as a registration statement under the Exchange Act, you do not have to provide the information called for by Item 3.C. You must provide the information called for by Item 3 if you are filing a registration statement under the Securities Act.

2. Throughout Form 20–F, the terms ''financial year'' and ''fiscal year'' have the same meaning. The term ''fiscal year'' is defined in Rule 405 under the Securities Act and Rule 12b–2 under the Exchange Act.

Instructions to Item 3.A: You may present the selected financial data on the basis of the accounting principles used in your primary financial statements. If you do this, however, you also must include in this summary any reconciliations of the data to U.S. generally accepted accounting principles and Regulation S–X, pursuant to Item 17 or 18 of this Form. In that case, you only have to provide selected financial data on a basis reconciled to U.S. generally accepted accounting principles for (i) those periods for which you were required to reconcile the primary annual financial statements in a filing under the Securities Act or the Exchange Act, and (ii) any interim periods.

If you are unable to provide selected financial data for the earliest two years of the five-year period, submit the required representation to us before or at the time you file the document. Disclose in the document that data for the earliest two years have been omitted and explain the reasons for the omission.

Instructions to Item 3.B:

1. If you are including the capitalization table called for by Item 3.B in a prospectus supplement for a shelf offering registered on Form F–3, the amounts shown in the table may be as of the date of the most recent balance sheet filed as part of the registration statement, if the information in the table is updated to reflect securities issued up to 60 days prior to the date of the supplement.

2. If you are not selling new securities in a firm commitment underwritten offering or an ''all or none'' best efforts offering, reflect the capitalization ''as adjusted'' for the net proceeds of the offering only in the following ways:

a. In a best efforts ''minimum/maximum'' offering, reflect both the minimum and maximum proceeds; and

b. In a rights offering or an offering of securities upon the exercise of outstanding warrants, reflect the proceeds only to the extent exercise is likely in view of the current market price.

Instructions to Item 3.D: Risk factors should be concise and explain clearly how the risk affects the issuer or the securities.

Item 4. Information on the Company

The purpose of this standard is to provide information about the company's business operations, the products it makes or the services it provides, and the factors that affect the business. The standard also is intended to provide information regarding the adequacy and suitability of the company's properties, plants and equipment, as well as its plans for future increases or decreases in such capacity.

A. *History and development of the company.* The following information shall be provided:

1. The legal and commercial name of the company.

2. The date of incorporation and the length of life of the company, except where indefinite.

3. The domicile and legal form of the company, the legislation under which the company operates, its country of incorporation and the address and telephone number of its registered office (or principal place of business if different from its registered office). Provide the name and address of the company's agent in the host country, if any.

4. The important events in the development of the company's business, e.g. information concerning the nature and results of any material reclassification, merger or consolidation of the company or any of its significant subsidiaries; acquisitions or dispositions of material assets other than in the ordinary course of business; any material changes in the mode of conducting the business; material changes in the types of products produced or services rendered; name changes; or the nature and results of any bankruptcy, receivership or similar proceedings with respect to the company or significant subsidiaries.

5. A description, including the amount invested, of the company's principal capital expenditures and divestitures (including interests in other companies), since the beginning of the company's last three financial years to the date of the offering or listing document.

6. Information concerning the principal capital expenditures and divestitures currently in progress, including the distribution of these investments geographically (home and abroad) and the method of financing (internal or external).

7. An indication of any public takeover offers by third parties in respect of the company's shares or by the company in respect of other companies' shares which have occurred during the last and current financial year. The price or exchange terms attaching to such offers and the outcome thereof are to be stated.

B. *Business overview.* The information required by this item may be presented on the same basis as that used to determine the company's business segments under the body of accounting principles used in preparing the financial statements. The following information shall be provided:

1. A description of the nature of the company's operations and its principal activities, stating the main categories of products sold and/or services performed for each of the last three financial years. Indicate any significant new products and/or services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, give the status of development.

2. A description of the principal markets in which the company competes, including a breakdown of total revenues by category of activity and geographic market for each of the last three financial years.

3. A description of the seasonality of the company's main business.

4. A description of the sources and availability of raw materials, including a description of whether prices of principal raw materials are volatile.

5. A description of the marketing channels used by the company, including an explanation of any special sales methods, such as installment sales.

6. Summary information regarding the extent to which the company is dependent, if at all, on patents or licenses, industrial, commercial or financial contracts (including contracts with customers or suppliers) or new manufacturing processes, where such factors are material to the company's business or profitability.

7. The basis for any statements made by the company regarding its competitive position shall be disclosed.

8. A description of the material effects of government regulations on the company's business, identifying the regulatory body.

C. *Organizational structure.* If the company is part of a group, include a brief description of the group and the company's position within the group. Provide a listing of the company's significant subsidiaries, including name, country of incorporation or residence, proportion of ownership interest and, if different, proportion of voting power held.

D. *Property, plants and equipment.* The company shall provide information regarding any material tangible fixed assets, including leased properties, and any major encumbrances thereon, including a description of the size and uses of the property; productive capacity and extent of utilization of the company's facilities; how the assets are held; the products produced; and the location. Also describe any environmental issues that may affect the company's utilization of the assets. With regard to any material plans to construct, expand or improve facilities, describe the nature of and reason for the plan, an estimate of the amount of expenditures including the amount of expenditures already paid, a description of the method of financing the activity, the estimated dates of start and completion of the activity, and the increase of production capacity anticipated after completion.

Instruction to Item 4: Furnish the information specified in any industry guide listed in Part 9 of Regulation S–K (§ 229.802 of this chapter) that applies to you, except that if you furnish the information specified in Appendix A to Item 4.D of this form you do not need to furnish any additional information specified in Guide 2 relating to oil and gas operations.

Instructions to Item 4.A.4: If you are providing the information called for by Item 4.A.4 in an annual report, you only have to provide the required information for the period from the beginning of your last full financial year up to the latest practicable date.

Instructions to Item 4.B:

1. The reference in Item 4.B to ''the body of accounting principles used in preparing the financial statements'' means the accounting principles used in preparing the primary financial statements, not to accounting principles used only to prepare the U.S. GAAP reconciliation.

2. If you:

(a) Are filing a registration statement on Form F–1 under the Securities Act or on Form 20–F under the Exchange Act,

(b) Were not required to file reports under Section 13(a) or 15(d) of the Exchange Act immediately prior to filing that registration statement, and

(c) Have not received (or your predecessor has not received) revenue from operations during each of the three fiscal years immediately prior to filing the registration statement:

you must provide information about your plan of operations. Provide information comparable to the information required by Item 101(a)(2) of Regulation S–K.

Instructions to Item 4.D:

1. In the case of an extractive enterprise:

(a) Provide material information about production, reserves, locations, developments and the nature of your interest. If individual properties are of major significance to you, provide more detailed information about those properties and use maps to disclose information about their location.

(b) If you are giving reserve estimates in the registration statement or report:

(i) Consult the staff of the Office of International Corporate Finance of the Division of Corporation Finance. That office may request that you provide supplementally a copy of the full report of the engineer or other expert who estimated the reserves. See Rule 418 of Regulation C (§ 230.418 of this chapter) and Rule 12b–4 of Regulation 12B (§ 240.12b–4 of this chapter) for information about submitting supplemental information to the Commission and requesting its return.

(ii) In documents you file publicly with the Commission, do not disclose estimates of oil or gas reserves unless the reserves are proved (or in the case of other extractive industries, proved or probable) and do not give estimated values of those reserves, unless foreign law requires you to disclose the information. If these types of estimates have already been provided to any person that is offering to acquire you, however, you may include the estimates in documents relating to the acquisition.

(iii) If you represent that the estimates of reserves you provide, or any estimated valuation of those reserves, are based on estimates prepared or reviewed by independent consultants, you must name those consultants in the document.

(c) If oil and gas operations are material to your or your subsidiaries' business operations or financial position, provide the information specified in Appendix A to Item 4.D, located at the end of this Form.

Item 5. Operating and Financial Review and Prospects

The purpose of this standard is to provide management's explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are anticipated to have a material effect on the company's financial condition and results of operations in future periods.

Discuss the company's financial condition, changes in financial condition and results of operations for each year and interim period for which financial statements are required, including the causes of material changes from year to year in financial statement line items, to the extent necessary for an understanding of the company's business as a whole. Information provided also shall relate to all separate segments of the company. Provide the information specified below as well as such other information that is necessary for an investor's understanding of the company's financial condition, changes in financial condition and results of operations.

A. *Operating results.* Provide information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the company's income from operations, indicating the extent to which income was so affected. Describe any other significant component of revenue or expenses necessary to understand the company's results of operations.

1. To the extent that the financial statements disclose material changes in net sales or revenues, provide a narrative discussion of the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of products or services being sold or to the introduction of new products or services.

2. Describe the impact of inflation, if material. If the currency in which financial statements are presented is of a country that has experienced hyperinflation, the existence of such inflation, a five year history of the annual rate of inflation and a discussion of the impact of hyperinflation on the company's business shall be disclosed.

3. Provide information regarding the impact of foreign currency fluctuations on the company, if material, and the extent to which foreign currency net investments are hedged by currency borrowings and other hedging instruments.

4. Provide information regarding any governmental economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the company's operations or investments by host country shareholders.

B. *Liquidity and capital resources.* The following information shall be provided:

1. Information regarding the company's liquidity (both short and long term), including:

(a) A description of the internal and external sources of liquidity and a brief discussion of any material unused sources of liquidity. Include a statement by the company that, in its opinion, the working capital is sufficient for the company's present requirements, or, if not, how it proposes to provide the additional working capital needed.

(b) An evaluation of the sources and amounts of the company's cash flows, including the nature and extent of any legal or economic restrictions on the ability of subsidiaries to transfer funds to the company in the form of cash dividends, loans or advances and the impact such restrictions have had or are expected to have on the ability of the company to meet its cash obligations.

(c) Information on the level of borrowings at the end of the period under review, the seasonality of borrowing requirements and the maturity profile of borrowings and committed borrowing facilities, with a description of any restrictions on their use.

2. Information regarding the type of financial instruments used, the maturity profile of debt, currency and interest rate structure. The discussion also should include funding and treasury policies and objectives in terms of the manner in which treasury activities are controlled, the currencies in which cash and cash equivalents are held, the extent to which borrowings are at fixed

rates, and the use of financial instruments for hedging purposes.

3. Information regarding the company's material commitments for capital expenditures as of the end of the latest financial year and any subsequent interim period and an indication of the general purpose of such commitments and the anticipated sources of funds needed to fulfill such commitments.

C. *Research and development, patents and licenses, etc.* Provide a description of the company's research and development policies for the last three years, where it is significant, including the amount spent during each of the last three financial years on company-sponsored research and development activities.

D. *Trend information.* The company should identify the most significant recent trends in production, sales and inventory, the state of the order book and costs and selling prices since the latest financial year. The company also should discuss, for at least the current financial year, any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the company's net sales or revenues, income from continuing operations, profitability, liquidity or capital resources, or that would cause reported financial information not necessarily to be indicative of future operating results or financial condition.

Instructions to Item 5:

1. Refer to the Commission's interpretive release (No. 33–6835) dated May 18, 1989 for guidance in preparing this discussion and analysis by management of the company's financial condition and results of operations.

2. The discussion should focus on the primary financial statements presented in the document. You should refer to the reconciliation to U.S. GAAP, if any, and discuss any aspects of the differences between foreign and U.S. GAAP, not otherwise discussed in the reconciliation, that you believe are necessary for an understanding of the financial statements as a whole.

3. We encourage you to supply forward-looking information, but that type of information is not required. Forward-looking information is covered expressly by the safe harbor provisions of Section 27A of the Securities Act and Section 27A of the Exchange Act. Forward-looking information is different than presently known data which will have an impact on future operating results, such as known future increases in costs of labor or materials. You are required to disclose this latter type of data if it is material.

Instruction to Item 5.A:

1. You must provide the information required by Item 5.A.2 with respect to hyperinflation if hyperinflation has occurred in any of the periods for which you are required to provide audited financial statements or unaudited interim financial statements in the document. See Rule 3–20(c) of Regulation S–X for a discussion of cumulative inflation rates that trigger this requirement.

Item 6. Directors, Senior Management and Employees

The purpose of this standard is to provide information concerning the company's directors and managers that will allow investors to assess such individuals' experience, qualifications and levels of compensation, as well as their relationship with the company. Information concerning the company's employees is also required.

A. *Directors and senior management.* The following information shall be disclosed with respect to the company's directors and senior management, and any employees such as scientists or designers upon whose work the company is dependent:

1. Name, business experience, functions and areas of experience in the company.

2. Principal business activities performed outside the issuing company (including, in the case of directors, other principal directorships).

3. Date of birth or age (if required to be reported in the home country or otherwise publicly disclosed by the company).

4. The nature of any family relationship between any of the persons named above.

5. Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to above was selected as a director or member of senior management.

B. *Compensation.* Provide the following information for the last full financial year for the company's directors and members of its administrative, supervisory or management bodies:

1. The amount of compensation paid, and benefits in kind granted, to such persons by the company and its subsidiaries for services in all capacities to the company and its subsidiaries by any person. Disclosure of compensation is required on an individual basis unless individual disclosure is not required in the company's home country and is not otherwise publicly disclosed by the company. The standard also covers contingent or deferred compensation accrued for the year, even if the compensation is payable at a later date. If any portion of the compensation was paid (a) pursuant to a bonus or profit-sharing plan, provide a brief description of the plan and the basis upon which such persons participate in the plan; or (b) in the form of stock options, provide the title and amount of securities covered by the options, the exercise price, the purchase price (if any), and the expiration date of the options.

2. The total amounts set aside or accrued by the company or its subsidiaries to provide pension, retirement or similar benefits.

C. *Board practices.* The following information for the company's last completed financial year shall be given with respect to, unless otherwise specified, the company's directors, and members of its administrative, supervisory or management bodies.

1. Date of expiration of the current term of office, if applicable, and the period during which the person has served in that office.

2. Details of directors' service contracts with the company or any of its subsidiaries providing for benefits upon termination of employment, or an appropriate negative statement.

3. Details relating to the company's audit committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.

D. *Employees.* Provide either the number of employees at the end of the period or the average for the period for each of the past three financial years (and changes in such numbers, if material) and, if possible, a breakdown of persons employed by main category of activity and geographic location. Also disclose any significant change in the number of employees, and information regarding the relationship between management and labor unions. If the company employs a significant number of temporary employees, include disclosure of the number of temporary employees on an average during the most recent financial year.

E. *Share ownership.*

1. With respect to the persons listed in subsection 6.B, above, provide information as to their share ownership in the company as of the most recent practicable date (including disclosure on an individual basis of the number of shares and percent of shares outstanding of that class, and whether they have different voting rights) held by the persons listed and options granted to them on the company's shares. Information regarding options shall include: the title and amount of securities called for by the options; the exercise price; the purchase price, if any; and the expiration date of the options.

2. Describe any arrangements for involving the employees in the capital of the company, including any arrangement that involves the issue or grant of options or shares or securities of the company.

Instruction to Item 6.C: The term ''plan'' is used very broadly and includes any type of arrangement for compensation, even if the terms of the plan are not contained in a formal document.

Instruction to Item 6.E: If (a) any of the persons listed in subsection 6.B beneficially owns less than one percent of the class of shares and (b) that person's individual share ownership previously has not been disclosed to shareholders or otherwise made public, you may indicate, by an asterisk and explanatory footnote or similar means, that the person beneficially owns less than one percent of the class, instead of providing that person's individual share ownership.

Item 7. Major Shareholders and Related Party Transactions

The purpose of this standard is to provide information regarding the major shareholders and others that control or may control the company. The standard also provides information regarding transactions the company has entered into with persons affiliated with the company and whether the terms of such transactions are fair to the company. These standards may require disclosure of related party transactions not required to be disclosed under the body of accounting principles used in preparing the financial statements. This standard is not intended to address the thresholds at which shareholders are required, on a continuing basis, to disclose their beneficial ownership of securities.

A. *Major shareholders.* To the extent that the following information is known to the company or can be ascertained from public filings, it should be provided as of the most recent practicable date, with references to the number of shares held in the company including shares beneficially owned.

1. The following information shall be provided regarding the company's major shareholders, which means shareholders that are the beneficial owners of 5% or more of each class of the company's voting securities (unless the company is required to disclose a lesser percentage in its home country, in which case that lesser percentage applies):

(a) Provide the names of the major shareholders, and the number of shares and the percentage of outstanding shares of each class owned by each of them as of the most recent practicable date, or an appropriate negative statement if there are no major shareholders.

(b) Disclose any significant change in the percentage ownership held by any major shareholders during the past three years.

(c) Indicate whether the company's major shareholders have different voting rights, or an appropriate negative statement.

2. Information shall be provided as to the portion of each class of securities held in the host country and the number of record holders in the host country.

3. To the extent known to the company, state whether the company is directly or indirectly owned or controlled by another corporation(s), by any foreign government or by any other natural or legal person(s) severally or jointly, and, if so, give the name(s) of such controlling corporation(s), government or other person(s), and briefly describe the nature of such control, including the amount and proportion of capital held giving a right to vote.

4. Describe any arrangements, known to the company, the operation of which may at a subsequent date result in a change in control of the company.

B. *Related party transactions.* Provide the information required below for the period since the beginning of the company's preceding three financial years up to the date of the document, with respect to transactions or loans between the company and (a) enterprises that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the company; (b) associates; (c) individuals owning, directly or indirectly, an interest in the voting power of the company that gives them significant influence over the company, and close members of any such individual's family; (d) key management personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the company, including directors and senior management of companies and close members of such individuals' families; and (e) enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (c) or (d) or over which such a person is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the company and enterprises that have a member of key management in common with the company. Close members of an individual's family are those that may be expected to influence, or be influenced by, that person in their dealings with the company. An associate is an unconsolidated enterprise in which the company has a significant influence or which has significant influence over the company. Significant influence over an enterprise is the power to participate in the financial and operating policy decisions of the enterprise but is less than control over those policies. Shareholders beneficially owning a 10% interest in the voting power of the company are presumed to have a significant influence on the company.

1. The nature and extent of any transactions or presently proposed transactions which are material to the company or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the company or any of its parent or subsidiaries was a party.

2. The amount of outstanding loans (including guarantees of any kind) made by the company or any of its parent or subsidiaries to or for the benefit of any of the persons listed above. The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan and the transaction in which it was incurred, and the interest rate on the loan.

C. *Interests of experts and counsel.* If any of the named experts or counselors was employed on a contingent basis, owns an amount of shares in the company or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the company or that depends on the success of the offering, provide a brief description of the nature and terms of such contingency or interest.

Instructions to Item 7.B:

1. If you are providing the information called for by Item 7.B in an annual report, you only have to provide the required information for the period from the beginning of your last full fiscal year up to the latest practicable date.

2. In response to Item 7.B.2, if the lender is a bank, savings and loan association, or broker dealer extending credit under Federal Reserve Regulation T, and the loans are not disclosed as nonaccrual, past due, restructured or potential problems under Industry Guide 3, your response may consist of a statement, if true, that the loans in question (A) were made in the ordinary course of business, (B) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons, and (C) did not involve more than the normal risk of collectibility or present other unfavorable features.

Instruction to Item 7.C: If you are filing Form 20–F as a registration statement or annual report under the Exchange Act, you do not have to provide the information called for by Item 7.C. You must provide this information if you are filing a registration statement under the Securities Act. Accountants who provide a report on financial statements that are presented or incorporated by reference in a registration statement should note Article 2 of Regulation S–X. That Article contains the Commission's requirements for qualifications and reports of accountants.

Item 8. Financial Information

The purpose of this standard is to specify which financial statements must be included in the document, as well as the periods to be covered, the age of the financial statements and other information of a financial nature.

A. *Consolidated Statements and Other Financial Information.*

1. The document must contain consolidated financial statements, audited by an independent auditor and accompanied by an audit report, comprised of:

(a) Balance sheet;

(b) Income statement;

(c) Statement showing either (i) changes in equity other than those arising from capital transactions with owners and distributions to owners; or (ii) all changes in equity (including a subtotal of all non-owner items recognized directly in equity);

(d) Cash flow statement;

(e) Related notes and schedules required by the comprehensive body of accounting standards pursuant to which the financial statements are prepared; and

(f) If not included in the primary financial statements, a note analyzing the changes in each caption of shareholders' equity presented in the balance sheet.

2. The document should include comparative financial statements that cover the latest three financial years, audited in accordance with a comprehensive body of auditing standards.

3. The audit report(s) must cover each of the periods for which these international disclosure standards require audited financial statements. If the auditors have refused to provide a report on the annual accounts or if the report(s) contain qualifications or disclaimers, such refusal or such qualifications or disclaimers shall be reproduced in full and the reasons given, so the host country securities regulator can determine whether or not to accept the financial statements. Include an indication of any other information in the document which has been audited by the auditors.

4. The last year of audited financial statements may not be older than 15 months at the time of the offering or listing; provided, however, that in the case of the company's initial public offering, the audited financial statements also shall be as of a date not older than 12 months at the time the document is filed. In such cases, the audited financial statements may cover a period of less than a full year.

5. If the document is dated more than nine months after the end of the last audited financial year, it should contain consolidated interim financial statements, which may be unaudited (in which case that fact should be stated), covering at least the first six months of the financial year. The interim financial statements should include a balance sheet, income statement, cash flow statement, and

a statement showing either (i) changes in equity other than those arising from capital transactions with owners and distributions to owners, or (ii) all changes in equity (including a subtotal of all non-owner items recognized directly in equity). Each of these statements may be in condensed form as long as it contains the major line items from the latest audited financial statements and includes the major components of assets, liabilities and equity (in the case of the balance sheet); income and expenses (in the case of the income statement) and the major subtotals of cash flows (in the case of the cash flow statement). The interim financial statements should include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the year end balance sheet. If not included in the primary financial statements, a note should be provided analyzing the changes in each caption of shareholders' equity presented in the balance sheet. The interim financial statements should include selected note disclosures that will provide an explanation of events and changes that are significant to an understanding of the changes in financial position and performance of the enterprise since the last annual reporting date. If, at the date of the document, the company has published interim financial information that covers a more current period than those otherwise required by this standard, the more current interim financial information must be included in the document. Companies are encouraged, but not required, to have any interim financial statements in the document reviewed by an independent auditor. If such a review has been performed and is referred to in the document, a copy of the auditor's interim review report must be provided in the document.

6. If the amount of export sales constitutes a significant portion of the company's total sales volume, provide the total amount of export sales and the percent and amount of export sales in the total amount of sales volume.

7. Provide information on any legal or arbitration proceedings, including those relating to bankruptcy, receivership or similar proceedings and those involving any third party, which may have, or have had in the recent past, significant effects on the company's financial position or profitability. This includes governmental proceedings pending or known to be contemplated.

8. Describe the company's policy on dividend distributions.

B. *Significant Changes.* Disclose whether or not any significant change has occurred since the date of the annual financial statements, and/or since the date of the most recent interim financial statements, if any, included in the document.

Instructions to Item 8:

1. This item refers to the company, but note that under Rules 3–05, 3–09, 3–10 and 3–14 of Regulation S–X, you also may have to provide financial statements or financial information for entities other than the issuer. In some cases, you may have to provide financial statements for a predecessor. See the definition of ''predecessor'' in Exchange Act Rule 12b–2 and Securities Act Rule 405.

2. For offerings of securities (a) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if the rights are granted pro rata to all existing securityholders of the class of securities to which the rights attach; or (b) pursuant to a dividend or interest reinvestment plan; or (c) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of that issuer, the 15-month period referred to in Item 8.A.4 is extended to 18 months and the interim financial statements referred to in Item 8.A.5 shall be as of a date within 12 months of the date of the document. The provisions of this paragraph are not applicable if securities are to be offered or sold in a standby underwriting in the United States or similar arrangement.

Instructions to Item 8.A.2:

1. You do not have to provide a balance sheet for the earliest of the three-year periods specified in Item 8.A.2 if that balance sheet is not required by a jurisdiction outside the United States.

2. The financial statements must be audited in accordance with U.S. generally accepted auditing standards, and the auditor must comply with the U.S. and Commission standards for auditor independence. Note Article 2 of Regulation S–X, which contains requirements for qualifications and reports of accountants.

Instruction to Item 8.A.3: The circumstances in which we would accept an audit report containing a disclaimer or qualification are extremely limited. If you plan to submit this type of report, we recommend that you contact the staff of the Office of Chief Accountant in the Division of Corporation Finance well in advance of filing the document, to discuss the report.

Instructions to Item 8.A.4:

1. In calculating the 15-month requirement for the age of financial statements, determine the age based on the period of time that has elapsed between the date of the balance sheet and ''the time of the offering or listing,'' which means the time the registration statement is declared effective. You may satisfy this requirement by providing audited financial statements covering a period of less than a full year.

2. The additional requirement that financial statements be no older than 12 months at the date of filing applies only in those limited cases where a nonpublic company is registering its initial public offering of securities. We will waive this requirement in cases where the company is able to represent adequately to us that it is not required to comply with this requirement in any other jurisdiction outside the United States and that complying with the requirement is impracticable or involves undue hardship. File this representation as an exhibit to the registration statement. If we waive the 12-month requirement, you must comply with the 15-month requirement in this item.

Instructions to Item 8.A.5:

1. Item 8.A.5 does not apply to annual reports on Form 20–F.

2. The third sentence of Item 8.A.5 explains that the required interim financial statements may be in condensed form using major line items from the latest audited financial statements. To determine which major line items must be included in condensed interim information, see Rules 10–01(a) (1) through (7).

3. The third sentence from the end of Item 8.A.5 requires you to include in the document interim financial information that has been published by the company if that information covers a more current period than the statements otherwise required by Item 8. This requirement does not apply to annual reports filed on Form 20–F. The requirement covers any publication of financial information that includes, at a minimum, revenue and income information, even if that information is not published as part of a complete set of financial statements. Whenever you provide more current interim financial information in response to this requirement:

(a) Describe any ways in which the accounting principles, practices and methods used in preparing that interim financial information vary materially from the principles, practices and methods accepted in the United States, and

(b) Quantify any material variations, unless they already are quantified because they occur in other financial statements included in the document.

Instructions to Item 8.A.7:

1. This Item also requires disclosure of any material proceeding in which any director, any member of senior management, or any of your affiliates is either a party adverse to you or your subsidiaries or has a material interest adverse to your or your subsidiaries.

2. If you are providing the information called for by Item 8.A.7 in an annual report, also describe the disposition of any previously reported litigation that occurred during the last fiscal year.

Item 9. The Offer and Listing

The purpose of this standard is to provide information regarding the offer or listing of securities, the plan for distribution of the securities and related matters.

A. *Offer and listing details.*

1. Indicate the expected price at which the securities will be offered or the method of determining the price, and the amount of any expenses specifically charged to the subscriber or purchaser.

2. If there is not an established market for the securities, the document shall contain information regarding the manner of determination of the offering price as well as of the exercise price of warrants and the conversion price of convertible securities, including who established the price or who is formally responsible for the determination of the price, the various factors considered in such determination and the parameters or elements used as a basis for establishing the price.

3. If the company's shareholders have pre-emptive purchase rights and where the exercise of the right of pre-emption of shareholders is restricted or withdrawn, the company shall indicate the basis for the issue price if the issue is for cash, together with the reasons for such restriction or withdrawal and the beneficiaries of such restriction or

withdrawal if intended to benefit specific persons.

4. Information regarding the price history of the stock to be offered or listed shall be disclosed as follows:

(a) For the five most recent full financial years: the annual high and low market prices;

(b) For the two most recent full financial years and any subsequent period: the high and low market prices for each full financial quarter;

(c) For the most recent six months: the high and low market prices for each month;

(d) For pre-emptive issues, the market prices for the first trading day in the most recent six months, for the last trading day before the announcement of the offering and (if different) for the latest practicable date prior to publication of the document.

Information shall be given with respect to the market price in the host market and the principal trading market outside the host market. If significant trading suspensions occurred in the prior three years, they shall be disclosed. If the securities are not regularly traded in an organized market, information shall be given about any lack of liquidity.

5. State the type and class of the securities being offered or listed and furnish the following information:

(a) Indicate whether the shares are registered shares or bearer shares and provide the number of shares to be issued and to be made available to the market for each kind of share. The nominal par or equivalent value should be given on a per share basis and, where applicable, a statement of the minimum offer price. Describe the coupons attached, if applicable.

(b) Describe arrangements for transfer and any restrictions on the free transferability of the shares.

6. If the rights evidenced by the securities being offered or listed are or may be materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other documents, include information regarding such limitation or qualification and its effect on the rights evidenced by the securities to be listed or offered.

7. With respect to securities other than common or ordinary shares to be listed or offered, outline briefly the rights evidenced thereby.

(a) If subscription warrants or rights are to be listed or offered, state: the title and amount of securities called for; the amount of warrants or rights outstanding; provisions for changes to or adjustments in the exercise price; the period during which and the price at which the warrants or rights are exercisable; and any other material terms of such warrants or rights.

(b) Where convertible securities or stock purchase warrants to be listed or offered are subject to redemption or call, the description of the conversion terms of the securities or material terms of the warrants shall include whether the right to convert or purchase the securities will be forfeited unless it is exercised before the date specified in the notice of redemption or call; the expiration or termination date of the warrants; the kind, frequency and timing of notice of the redemption or call, including where the notice will be published; and, in the case of bearer securities, that investors are responsible for making arrangements to prevent loss of the right to convert or purchase in the event of redemption or call.

B. *Plan of distribution.*

1. The names and addresses of the entities underwriting or guaranteeing the offering shall be listed.

2. To the extent known to the company, indicate whether major shareholders, directors or members of the company's management, supervisory or administrative bodies intend to subscribe in the offering, or whether any person intends to subscribe for more than 5% of the offering.

3. Identify any group of targeted potential investors to whom the securities are offered. If the offering is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.

4. If securities are reserved for allocation to any group of targeted investors, including, for example, offerings to existing shareholders, directors, or employees and past employees of the company or its subsidiaries, provide details of these and any other preferential allocation arrangements.

5. Indicate whether the amount of the offering could be increased, such as by the exercise of an underwriter's over-allotment option or ''greenshoe,'' and by how much.

6. Indicate the amount, and outline briefly the plan of distribution, of any securities that are to be offered otherwise than through underwriters. If the securities are to be offered through the selling efforts of brokers or dealers, describe the plan of distribution and the terms of any agreement or understanding with such entities. If known, identify the broker(s) or dealer(s) that will participate in the offering and state the amount to be offered through each.

7. If the securities are to be offered in connection with the writing of exchange-traded call options, describe briefly such transactions.

8. If simultaneously or almost simultaneously with the creation of shares for which admission to official listing is being sought, shares of the same class are subscribed for or placed privately or if shares of other classes are created for public or private placing, details are to be given of the nature of such operations and of the number and characteristics of the shares to which they relate.

9. Unless otherwise described under the response to Item 10.C (Material Contracts), describe the features of the underwriting relationship together with the amount of securities being underwritten by each underwriter in privity of contract with the company or selling shareholders. The foregoing information should include a statement as to whether the underwriters are or will be committed to take and to pay for all of the securities if any are taken, or whether it is an agency or the type of ''best efforts'' arrangement under which the underwriters are required to take and to pay for only such securities as they may sell to the public.

10. If any underwriter or other financial adviser has a material relationship with the company, describe the nature and terms of such relationship.

C. *Markets.* The company shall disclose all stock exchanges and other regulated markets on which the securities to be offered or listed are traded. When an application for admission to any exchange and/or regulated market is being or will be sought, this must be mentioned, without creating the impression that the listing necessarily will be approved. If known, the dates on which the shares will be listed and dealt in should be given.

D. *Selling shareholders.* The following information shall be provided:

1. The name and address of the person or entity offering to sell the shares, the nature of any position, office or other material relationship that the selling shareholder has had within the past three years with the company or any of its predecessors or affiliates.

2. The number and class of securities being offered by each of the selling shareholders, and the percentage of the existing equity capital. The amount and percentage of the securities for each particular type of securities beneficially held by the selling shareholder before and immediately after the offering shall be specified.

E. *Dilution.* The following information shall be provided:

1. Where there is a substantial disparity between the public offering price and the effective cash cost to directors or senior management, or affiliated persons, of equity securities acquired by them in transactions during the past five years, or which they have the right to acquire, include a comparison of the public contribution in the proposed public offering and the effective cash contributions of such persons.

2. Disclose the amount and percentage of immediate dilution resulting from the offering, computed as the difference between the offering price per share and the net book value per share for the equivalent class of security, as of the latest balance sheet date.

3. In the case of a subscription offering to existing shareholders, disclose the amount and percentage of immediate dilution if they do not subscribe to the new offering.

F. *Expenses of the issue.* The following information shall be provided:

1. The total amount of the discounts or commissions agreed upon by the underwriters or other placement or selling agents and the company or offeror shall be disclosed, as well as the percentage such commissions represent of the total amount of the offering and the amount of discounts or commissions per share.

2. A reasonably itemized statement of the major categories of expenses incurred in connection with the issuance and distribution of the securities to be listed or offered and by whom the expenses are payable, if other than the company. If any of the securities are to be offered for the account of a selling shareholder, indicate the portion of such expenses to be borne by such shareholder. The information may be given subject to future contingencies. If the amounts of any items are not known, estimates (identified as such) shall be given.

Instruction to Item 9: If you are using this Form as a registration statement under the

Exchange Act, provide only the information called for by Items 9.A.4–7 and 9.C. If you are using this Form as an annual report, provide only the information called for by Items 9.A.4 and 9.C. If you are providing this information in a Securities Act registration statement, provide the information called for by the entire Item.

Instruction to Item 9.A: When you are required to state the title of the securities, the title must indicate the type and general character of the securities, such as whether they are callable, convertible or redeemable and whether there is any preference or fixed rate of dividends.

Instructions to Item 9.B:

1. You may satisfy the requirement in Item 9.B.1 to provide the underwriters' addresses by giving the addresses of the lead underwriters for the offering.

2. If previously you have not been required to file reports under section 13(a) or 15(d) of the Exchange Act and any of the managing underwriters (or a majority of the principal underwriters) has been organized, reactivated or first registered as a broker-dealer within the past three years, disclose that fact. Also disclose, if true, that the principal business function of this underwriter will be to sell the securities being registered or that your promoters or founders have a material relationship with this underwriter. Give enough details to provide a clear picture of the underwriter's experience and its relationship with you, your promoters or founders, and their controlling persons.

Instruction to Item 9.F: Major categories of expenses include at least the following: registration fees, federal taxes, state taxes and fees, trustees' and transfer agents' fees, printing and engraving costs, legal fees, accounting fees, engineering fees, and any premiums paid to insure directors or officers for liabilities in connection with the registration, offer or sale of the securities you are registering.

Item 10. Additional Information

The purpose of this standard is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the document.

A. *Share capital.* The following information shall be given as of the date of the most recent balance sheet included in the financial statements and as of the latest practicable date:

1. The amount of issued capital and, for each class of share capital: (a) the number of shares authorized; (b) the number of shares issued and fully paid and issued but not fully paid; (c) the par value per share, or that the shares have no par value; and (d) a reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10% of capital has been paid for with assets other than cash within the past five years, that fact should be stated.

2. If there are shares not representing capital, the number and main characteristics of such shares shall be stated.

3. Indicate the number, book value and face value of shares in the company held by or on behalf of the company itself or by subsidiaries of the company.

4. Where there is authorized but unissued capital or an undertaking to increase the capital, for example, in connection with warrants, convertible obligations or other outstanding equity-linked securities, or subscription rights granted, indicate: (i) the amount of outstanding equity-linked securities and of such authorized capital or capital increase and, where appropriate, the duration of the authorization; (ii) the categories of persons having preferential subscription rights for such additional portions of capital; and (iii) the terms, arrangements and procedures for the share issue corresponding to such portions.

5. The persons to whom any capital of any member of the group is under option or agreed conditionally or unconditionally to be put under option, including the title and amount of securities covered by the options; the exercise price; the purchase price, if any; and the expiration date of the options, or an appropriate negative statement. Where options have been granted or agreed to be granted to all the holders of shares or debt securities, or of any class thereof, or to employees under an employees' share scheme, it will be sufficient so far as the names are concerned, to record that fact without giving names.

6. A history of share capital for the last three years identifying the events during such period which have changed the amount of the issued capital and/or the number and classes of shares of which it composed, together with a description of changes in voting rights attached to the various classes of shares during that time. Details should be given of the price and terms of any issue including particulars of consideration where this was other than cash (including information regarding discounts, special terms or installment payments). If there are no such issues, an appropriate negative statement must be made. The reason for any reduction of the amount of capital and the ratio of capital reductions also shall be given.

7. An indication of the resolutions, authorizations and approvals by virtue of which the shares have been or will be created and/or issued, the nature of the issue and amount thereof and the number of shares which have been or will be created and/or issued, if predetermined.

B. *Memorandum and articles of association.* The following information shall be provided:

1. Indicate the registor and the entry number therein, if applicable, and describe the company's objects and purposes and where they can be found in the memorandum and articles.

2. With respect to directors, provide a summary of any provisions of the company's articles of association or charter and bylaws with respect to: (a) a director's power to vote on a proposal, arrangement or contract in which the director is materially interested; (b) the directors' power, in the absence of an independent quorum, to vote compensation to themselves or any members of their body; (c) borrowing powers exercisable by the directors and how such borrowing powers can be varied; (d) retirement or non-retirement of directors under an age limit requirement; and (e) number of shares, if any, required for director's qualification.

3. Describe the rights, preferences and restrictions attaching to each class of the shares, including: (a) dividend rights, including the time limit after which dividend entitlement lapses and an indication of the party in whose favor this entitlement operates; (b) voting rights, including whether directors stand for reelection at staggered intervals and the impact of that arrangement where cumulative voting is permitted or required; (c) rights to share in the company's profits; (d) rights to share in any surplus in the event of liquidation; (e) redemption provisions; (f) sinking fund provisions; (g) liability to further capital calls by the company; and (h) any provision discriminating against any existing or prospective holder of such securities as a result of such shareholder owning a substantial number of shares.

4. Describe what action is necessary to change the rights of holders of the stock, indicating where the conditions are more significant than is required by law.

5. Describe the conditions governing the manner in which annual general meetings and extraordinary general meetings of shareholders are convoked, including the conditions of admission.

6. Describe any limitations on the rights to own securities, including the rights of non-resident or foreign shareholders to hold or exercise voting rights on the securities imposed by foreign law or by the charter or other constituent document of the company or state that there are no such limitations if that is the case.

7. Describe briefly any provision of the company's articles of association, charter or bylaws that would have an effect of delaying, deferring or preventing a change in control of the company and that would operate only with respect to a merger, acquisition or corporate restructuring involving the company (or any of its subsidiaries).

8. Indicate the bylaw provisions, if any, governing the ownership threshold above which shareholder ownership must be disclosed.

9. With respect to items 2 through 8 above, if the law applicable to the company in these areas is significantly different from that in the host country, the effect of the law in these areas should be explained.

10. Describe the conditions imposed by the memorandum and articles of association governing changes in the capital, where such conditions are more stringent than is required by law.

C. *Material contracts.* Provide a summary of each material contract, other than contracts entered into in the ordinary course of business, to which the company or any member of the group is a party, for the two years immediately preceding publication of the document, including dates, parties, general nature of the contracts, terms and conditions, and amount of any consideration passing to or from the company or any other member of the group.

D. *Exchange controls.* Describe any governmental laws, decrees, regulations or other legislation of the home country of the company which may affect:

1. The import or export of capital, including the availability of cash and cash equivalents for use by the company's group.

2. The remittance of dividends, interest or other payments to nonresident holders of the company's securities.

E. *Taxation.* The company shall provide information regarding taxes (including withholding provisions) to which shareholders in the host country may be subject. Information should be included as to whether the company assumes responsibility for the withholding of tax at the source and regarding applicable provisions of any reciprocal tax treaties between the home and host countries, or a statement, if applicable, that there are no such treaties.

F. *Dividends and paying agents.* Disclose any dividend restrictions, the date on which the entitlement to dividends arises, if known, and any procedures for nonresident holders to claim dividends. Identify the financial organizations which, at the time of admission of shares to official listing, are the paying agents of the company in the countries where admission has taken place or is expected to take place.

G. *Statement by experts.* Where a statement or report attributed to a person as an expert is included in the document, provide such person's name, address and qualifications and a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of that person, who has authorized the contents of that part of the document.

H. *Documents on display.* The company shall provide an indication of where the documents concerning the company which are referred to in the document may be inspected. Exhibits and documents on display generally should be translated into the language of the host country, or a summary in the host country language should be provided.

I. *Subsidiary Information.* Certain information relating to the company's subsidiaries must be provided in some countries, if the information is not otherwise called for by the body of generally accepted accounting principles used in preparing the financial statements.

Instructions to Item 10:

1. In annual reports filed on Form 20–F:

(a) You do not have to provide the information called for by Items 10.A, 10.F and 10.G; and

(b) If the information called for by Item 10.B has been reported previously in a registration statement on Form 20–F or a registration statement filed under the Securities Act and has not changed, you may incorporate that information by a specific reference in the annual report to the previous registration statement.

2. In registration statements filed under the Securities Act or the Exchange Act that relate to securities other than common equity, you do not have to provide the information called for by Items 10.A or 10.F.

3. The information referred to in Item 10.I is not required for registration statements and reports filed in the United States.

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Item 12. Description of Securities Other Than Equity Securities

A. *Debt Securities.* If you are registering debt securities, provide the following information if it is relevant to the securities you are registering.

1. Information about interest, conversions, maturity, redemption, amortization, sinking funds or retirement.

2. The kind and priority of any lien securing the issue, as well as a brief identification of the principal properties subject to each lien.

3. Subordination of the rights of holders of the securities to other security holders or creditors. If the securities are designated in their title as subordinated, give the aggregate amount of outstanding indebtedness as of the most recent practicable date that is senior to the subordinated debt and briefly describe any limitations on the issuance of additional senior indebtedness, or state that there is no limitation.

4. Information about provisions restricting the declaration of dividends or requiring the creation or maintenance of any reserves or of any ratio of assets or requiring the maintenance of properties.

5. Information about provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against the issuance of additional securities, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security and similar provisions. You do not need to describe provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property or property taken by eminent domain, the application of insurance monies, and similar provisions.

6. The general type of event that constitutes a default and whether or not you are required to provide periodic evidence of the absence of a default or of compliance with the terms of the indenture.

7. Modification of the terms of the security or the rights of security holders.

8. If the rights evidenced by the securities you are registering are or may be materially limited or qualified by the rights of any other authorized class of securities, provide enough information about the other class of securities so investors will understand the rights evidenced by the securities you are registering. You do not need to provide information about the other class of securities if all of it will be retired, as long as you have taken appropriate steps to ensure that retirement will be completed on or before the time you deliver the securities you are registering.

9. The tax effects of any ''original issue discount'' as that term is defined in Section 1232 of the Internal Revenue Code (26 U.S.C. 1232), including cases where the debt security is being sold in a package with another security and the allocation of the offering price between the two securities may have the effect of offering the debt security at an original issue discount.

10. The name and address of the trustee and the nature of any material relationship between the trustee and you or any of your affiliates, the percentage of the class of securities that is needed to require the trustee to take action, and what indemnification the trustee may require before proceeding to enforce the lien.

11. The names and addresses of the paying agents.

12. The currency or currencies in which the debt is payable. If the debt may be paid in two or more currencies, state who has the option to determine the currency conversion and what the basis will be for that determination.

13. Any law or decree determining the extent to which the securities may be serviced.

14. The consequences of any failure to pay principal, interest, or any sinking or amortization installment.

15. If the securities are guaranteed, the name of the guarantor and a brief outline of the contract of guarantee.

B. *Warrants and Rights.* If the securities you are registering are being offered pursuant to warrants or rights, provide the following information, in addition to the description of the securities the warrants or rights represent.

1. The amount of securities called for by the warrants or rights.

2. The period during and the price at which the warrants or rights are exercisable.

3. The amount of warrants or rights outstanding.

4. Provisions for changes or adjustments in the exercise price.

5. Any other material terms of the warrants or rights.

C. *Other Securities.* If you are registering securities other than equity, debt, warrants or rights, briefly describe the rights evidenced by the securities you are registering. The description should be comparable in detail to the description you would be required to provide for equity, debt, warrants or rights.

D. *American Depositary Shares.* If you are registering American depositary shares represented by American depositary receipts, provide the following information.

1. Give the name of the depositary and the address of its principal executive office.

2. Give the title of the American depositary receipts and identify the deposited security. Briefly describe the American depositary shares, including provisions, if any, regarding:

(a) The amount of deposited securities represented by one unit of American depositary receipts;

(b) Any procedure for voting the deposited securities;

(c) The procedure for collecting and distributing dividends;

(d) The procedures for transmitting notices, reports and proxy soliciting material;

(e) The sale or exercise of rights;

(f) The deposit or sale of securities resulting from dividends, splits or plans of reorganization;

(g) Amendment, extension or termination of the deposit arrangements;

(h) The rights that holders of American depositary receipts have to inspect the books of the depositary and the list of receipt holders;

(i) Any restrictions on the right to transfer or withdraw the underlying securities; and

(j) Any limitation on the depositary's liability.

3. Describe all fees and charges that a holder of American depositary receipts may

have to pay, either directly or indirectly. Indicate the type of service, the amount of the fees or charges and to whom the fees or charges are paid. In particular, provide information about any fees or charges in connection with (a) depositing or substituting the underlying shares; (b) receiving or distributing dividends; (c) selling or exercising rights; (d) withdrawing an underlying security; and (e) transferring, splitting or grouping receipts. Provide information about the depositary's right, if any, to collect fees and charges by offsetting them against dividends received and deposited securities.

Instructions to Item 12:

1. You do not need to provide the information called for by this item if you are using this form as an annual report.

2. You do not need to include any information in a registration statement or prospectus in response to Item 305(a)(2) of the Trust Indenture Act of 1939, 15 U.S.C. 77aaa *et seq.*, as amended, if the information is not otherwise required by this Item.

3. If you are registering convertible securities or stock purchase warrants that are subject to redemption or call, include the following information in your description of the securities.

a. Whether holders will forfeit the right to convert or purchase the securities unless they exercise that right before the date specified in the notice of redemption or call;

b. The expiration or termination date of the warrants;

c. The kinds, frequency and timing of the redemption or call notice, including the cities or newspapers in which you will publish the notice; and

d. In the case of bearer securities, that investors are responsible for making arrangements to avoid losing the right to convert or purchase if there is a redemption or call, such as by reading the newspapers in which you will publish the redemption or call notice.

4. When you are required to state the title of the securities, the title must indicate the type and general character of the securities.

Part II

Item 13. Defaults, Dividend Arrearages and Delinquencies

A. If there has been:

1. A material default in the payment of principal, interest, a sinking or purchase fund installment, or

2. Any other material default not cured within 30 days, relating to indebtedness of you or any of your significant subsidiaries, and if the amount of the indebtedness exceeds 5% of your total assets on a consolidated basis, identify the indebtedness and state the nature of the default. If the default falls under paragraph A.1 above, state the amount of the default and the total arrearage on the date you file this report.

B. If the payment of dividends is in arrears or there has been any other material delinquency not cured within 30 days, relating to:

1. Any class of your preferred stock which is registered or ranks prior to any class of registered securities, or

2. Any class of preferred stock of your significant subsidiaries, state the title of the class and the nature of the arrearage or delinquency. If the payment of dividends is in arrears, state the amount of this arrearage and the total arrearage on the date you file this report.

Instructions to Item 13:

1. If you previously have reported information called for by this item in a report on Form 6–K, you may incorporate the information by specifically referring in this report to the previous report.

2. You do not have to provide the information called for by this Item if the default or arrearage relates to a class of securities held entirely by or for the account of you or any of your wholly owned subsidiaries.

Instructions to Item 13.A: This requirement only applies to events that have become defaults under the governing instruments, i.e., after any grace period has expired and any notice requirements have been satisfied.

Item 14. Material Modifications to the Rights of Security Holders and Use of Proceeds

A. If you or anyone else has modified materially the instruments defining the rights of holders of any class of registered securities, identify that class of securities and briefly describe the general effect of the modification on the rights of those security holders.

B. If you or anyone else has modified materially or qualified the rights evidenced by any class of registered securities by issuing or modifying any other class of securities, briefly describe the general effect of the issuance or modification on the rights of holders of the registered securities.

C. If you or anyone else has withdrawn or substituted a material amount of the assets securing any class of your registered securities, provide the following information.

1. Give the title of the securities.

2. Identify and describe briefly the assets withdrawn or substituted.

3. Indicate the provisions in the underlying indenture, if any, that authorize the withdrawal or substitution.

D. If the trustees or paying agents for any registered securities have changed during the last financial year, give the names and addresses of the new trustees or paying agents.

E. *Use of proceeds.* If required pursuant to Rule 463 under the Securities Act, report the use of proceeds after the effective date of the first Securities Act registration statement filed by you or your predecessor. You must report the use of proceeds:

(i) On the first Form 20–F annual report you file pursuant to sections 13(a) and 15(d) of the Exchange Act after the Securities Act registration statement is effective, and

(ii) On each of your subsequent Form 20–F annual reports filed pursuant to sections 13(a) and 15(d) of the Exchange Act.

You may cease reporting the use of proceeds on the later of the date you disclose application of all the offering proceeds, or the date you disclose termination of the offering. If a required report on the use of proceeds relates to the first effective registration statement of your predecessor, you must provide the report.

Provide the information required by paragraphs E.1 through E.4 below in the first Form 20–F annual report you file pursuant to sections 13(a) and 15(d) of the Exchange Act. In subsequent Form 20–F annual reports, you only need to provide the information required by paragraphs E.2 through E.4 if that information has changed since the last Form 20–F annual report you filed.

1. The effective date of the Securities Act registration statement for which the use of proceeds information is being disclosed and the Commission file number assigned to that registration statement;

2. The offering date, if the offering has commenced, or an explanation of why it has not commenced;

3. If the offering terminated before any securities were sold, an explanation for the termination; and

4. If the offering did not terminate before any securities were sold, disclose:

(a) Whether the offering has terminated and, if so, whether it terminated before all of the registered securities were sold;

(b) The name(s) of the managing underwriter(s), if any;

(c) The title of each class of securities registered and, if a class of convertible securities is being registered, the title of any class of securities into which the convertible securities may be converted;

(d) For each class of securities (other than a class into which a class of registered convertible securities may be converted without additional payment to the issuer) the following information, provided for both the account of the issuer and the account(s) of any selling shareholder(s): the amount registered, the aggregate price of the offering amount registered, the amount sold and the aggregate offering price of the amount sold to date;

(e) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of expenses incurred for the issuer's account in connection with the issuance and distribution of the registered securities for underwriting discounts and commissions, finders' fees, expenses paid to or for underwriters, other expenses and total expenses. Indicate if a reasonable estimate for the amount of expenses is provided instead of the actual amount of the expense. Indicate whether the payments were:

(i) Direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning 10% or more of any class of the issuer's equity securities; and to affiliates of the issuer; or

(ii) Direct or indirect payments to others;

(f) The net offering proceeds to the issuer after deducting the total expenses described in paragraph E.4(e) of this Item;

(g) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of net offering proceeds to the issuer used for construction of plant, building and facilities; purchase and installation of machinery and equipment; purchases of real estate; acquisition of other business(es); repayment of indebtedness; working capital; temporary investments (which should be specified); and any other purposes for which at least 5% of

the issuer's total offering proceeds or $100,000 (whichever is less) has been used (which should be specified). Indicate if a reasonable estimate for the amount of net offering proceeds applied instead of the actual amount of net offering proceeds used. Indicate whether such payments were:

(i) Direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning 10% or more of any class of the issuer's equity securities; and to affiliates of the issuer; or

(ii) Direct or indirect payments to others; and

(h) If the use of proceeds in paragraph E.4(g) of this Item represents a material change in the use of proceeds described in the prospectus, the issuer should describe briefly the material change.

Instruction to Item 14: If you previously have reported information called for by this item in a report on Form 6–K, you may incorporate the information by specifically referring in this report to the previous report.

Instruction to Item 14.B: You should report any working capital restrictions or other limitations on the payment of dividends.

Instruction to Item 14.C: You do not have to provide the information called for by Item 14.C. if the withdrawal or substitution is made pursuant to the terms of an indenture qualified under the Trust Indenture Act of 1939.

Item 15. [Reserved]

Item 16. [Reserved]

Part III

[See General Instruction E(c)]

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Item 18. Financial Statements

Provide the following information:

(a) All of the information required by Item 17 of this Form, and

(b) All other information required by U.S. generally accepted accounting principles and Regulation S–X unless such requirements specifically do not apply to the registrant as a foreign issuer. However, information may be omitted (i) for any period in which net income has not been presented on a basis reconciled to United States generally accepted accounting principles, or (ii) if the financial statements are furnished for a business acquired or to be acquired pursuant to § 210.3–05 or less-than-majority-owned investee pursuant to § 210.3–09 of this chapter.

Instruction to Item 18: All of the instructions to Item 17 also apply to this Item, except Instruction 3 to Item 17, which does not apply.

Item 19. Exhibits

List all exhibits filed as part of the registration statement or annual report, including exhibits incorporated by reference.

Instruction to Item 19: If you incorporate any financial statement or exhibit by reference, include the incorporation by reference in the list required by this Item. Note Rule 1b2–23 regarding incorporation by reference. Note also the Instructions to Exhibits at the end of this Form.

Signatures

The registrant hereby certifies that it meets all of the requirements for filing on Form 20–F and that it has duly caused and authorized the undersigned to sign this registration statement [annual report] on its behalf.

_____

(Registrant)

_____

(Signature)*

Date: _____

_____

*Print the name and title of the signing officer under this signature.

Instructions as to Exhibits

File the exhibits listed below as part of an Exchange Act registration statement or report. Rule 12b–32 explains the circumstances in which you may incorporate exhibits by reference. Rule 24b–2 explains the procedure to be followed in requesting confidential treatment of information required to be filed.

Previously filed exhibits may be incorporated by reference. If any previously filed exhibits have been amended or modified, file copies of the amendment or modification or copies of the entire exhibit as amended or modified.

Include an exhibit index in each registration statement or report you file, immediately preceding the exhibits you are filing. The exhibit index must list each exhibit according to the number assigned to it below. If an exhibit is incorporated by reference, note that fact in the exhibit index. The pages of the manually signed original registration statement should be numbered in sequence, and the exhibit index should give the page number in the sequential numbering system where each exhibit can be found.

1. The articles of incorporation or association and bylaws, or comparable instruments, as currently in effect and any amendments to those documents. If you are filing an amendment, file a complete copy of the document as amended.

2. (a) All instruments defining the rights of holders of the securities being registered. You do not have to file instruments that define the rights of participants, rather than security holders, in an employee benefit plan.

(b) All instruments defining the rights of holders of long-term debt issued by you or any subsidiary for which you are required to file consolidated or unconsolidated financial statements, except that you do not have to file:

(i) Any instrument relating to long-term debt that is not being registered on this registration statement, if the total amount of securities authorized under that instrument does not exceed 10% of the total assets of you and your subsidiaries on a consolidated basis and you have filed an agreement to furnish us a copy of the instrument if we request it;

(ii) Any instrument relating to a class of securities if, on or before the date you deliver the securities being registered, you take appropriate steps to assure that class of securities will be redeemed or retired; or

(iii) Copies of instruments evidencing script certificates for fractions of shares.

(c) A copy of the indenture, if the securities being registered are or will be issued under an indenture qualified under the Trust Indenture Act of 1939. Include a reasonably itemized and informative table of contents and a cross-reference sheet showing the location in the indenture of the provisions inserted pursuant to sections 310 through 318(a) inclusive of the Trust Indenture Act.

3. Any voting trust agreements and any amendments to those agreements.

4. (a) Every contract that is material to you and (i) is to be performed in whole or in part on or after the date you file the registration statement or (ii) was entered into not more than two years before the filing date. Only file a contract if you or your subsidiary is a party or has succeeded to a party by assumption or assignment or if you or your subsidiary has a beneficial interest.

(b) If a contract is the type that ordinarily accompanies the kind of business you and your subsidiaries conduct, we will consider it have been made in the ordinary course of business and will not require you to file it, unless it falls within one or more of the following categories. Even if it falls into one of these categories, you do not have to file the contract if it is immaterial in amount or significance.

(i) Any contract to which (A) directors, (B) officers, (C) promoters, (D) voting trustees or (E) security holders named in the registration statement are parties, unless the contract involves only the purchase or sale of current assets that have a determinable market price and the assets are purchased or sold at that price;

(ii) Any contract upon which your business is substantially dependent. Examples of these types of contracts might be (a) continuing contracts to sell the major part of your products or services or to purchase the major part of your requirement of goods, services or raw materials, or (b) any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name if your business depends to a material extent on that patent, formula, trade secret processor trade name;

(iii) Any contract for the acquisition or sale of any property, plant or equipment if the consideration exceeds 15% of your fixed assets on a consolidated basis; or

(iv) Any material lease under which you hold part of the property described in the registration statement.

(c) We will consider any management contract or compensatory plan, contract or arrangement in which your directors or members of your administrative, supervisory or management bodies participate to be material. File these management contracts or compensatory plans, contracts or arrangements unless they fall into one of the following categories:

(i) Ordinary purchase and sale agency agreements;

(ii) Agreements with managers of stores in a chain or similar organization;

(iii) Contracts providing for labor or salesmen's bonuses or for payments to a class of security holders in their capacity as security holders;

(iv) Any compensatory plan, contract or arrangement that is available by its terms to

employees, officers or directors generally, if the operation of the plan, contract or arrangement uses the same method to allocate benefits to management and nonmanagment participants; and

(v) Any compensatory plan, contract or arrangement if you are furnishing compensation information on an aggregate basis as permitted by Item 6.B.

If you are filing compensatory plans, contracts or arrangements, only file copies of the plans and not copies of each individual's personal agreement under the plans, unless there are particular provisions in a personal agreement that should be filed as an exhibit so investors will understand that individual's compensation under the plan.

5. A list showing the number and a brief identification of each material foreign patent for an invention not covered by a United States patent, but only if we request you to file the list.

6. A statement explaining in reasonable detail how earnings per share information was calculated, unless the computation is clear from material contained in the registration statement or report.

7. A statement explaining in reasonable detail how any ratio of earning to fixed charges, any ratio of earnings to combined fixed charges and preferred stock dividends or any other ratios in the registration statement or report were calculated.

8. A list of all your subsidiaries, their jurisdiction of incorporation and the names under which they do business. You may omit the names of subsidiaries that, in the aggregate, would not be a ''significant subsidiary'' as defined in rule 1–02(w) of Regulation S–X as of the end of the year covered by the report. You may omit the names of multiple wholly owned subsidiaries carrying on the same line of business, such as chain stores or service stations, if you give the name of the immediate parent company, the line of business and the number of omitted subsidiaries broken down by U.S. and foreign operations.

9. Statement pursuant to the instructions to Item 8.A.4, regarding the financial statements filed in registration statements for initial public offerings of securities.

10. (a) Any additional exhibits you wish to file as part of the registration statement or report, clearly marked to indicate their subject matter, and (b) any document or part of a document incorporated by reference in this filing if it is not otherwise required to be filed or is not a Commission filed document incorporated in a Securities Act registration statement.

* * * * *

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

51. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 78sss, 78ll(d), 80b–3, 80b–4, and 80b–11.

§ 260.0–11 [Amended]

51. Amend § 260.0–11 by removing in paragraph (b)(2) the words '' Item 9 of Form 20–F (§ 249.220f of this chapter), management's discussion and analysis of financial condition and results of operations,'' and adding, in their place, the words '' Item 5 of Form 20–F (§ 249.220f of this chapter), ''Operating and Financial Review and Prospects,''''; and by removing in paragraph (c)(3) the words ''Item 9 of Form 20–F'' and adding, in their place, the words '' Item 5 of Form 20–F''.

By the Commission.

Margaret H. McFarland,

Deputpy Secretary.

[FR Doc. 99–25699 Filed 10–4–99; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 99F–1422]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the expanded safe use of 2,4-di-*tert*-pentyl-6-[1-(3,5-di-*tert*-pentyl-2-hydroxyphenyl)ethyl]phenyl acrylate as an antioxidant and/or stabilizer for polypropylene, polystyrene, rubber-modified polystyrene, and styrene block copolymers intended for use in contact with food. This action responds to a petition filed by Sumitomo Chemical Co., Ltd.

DATES: This regulation is effective October 5, 1999. Submit written objections and requests for a hearing by November 4, 1999.

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

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 26, 1999 (64 FR 28501), FDA announced that a food additive petition (FAP 9B4661) had been filed by Sumitomo Chemical Co., Ltd., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of 2,4-di-*tert*-pentyl-6-[1-(3,5-di-*tert*-pentyl-2-hydroxyphenyl)ethyl]phenyl acrylate as an antioxidant and/or stabilizer for polypropylene, polystyrene, rubber-modified polystyrene, and styrene block copolymers intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9B4661 (64 FR 28501). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before November 4, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in

support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) by revising the entry for ''2,4-Di-*tert*-pentyl-6-[1-(3,5-di-*tert*-pentyl-2-hydroxyphenyl)ethyl]phenyl acrylate'' to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * * *
2,4-Di-*tert*-pentyl-6-[1-(3,5-di-*tert*-pentyl-2-hydroxyphenyl)ethyl]phenyl acrylate (CAS Reg. No. 123968–25–2).	For use only: 1. At levels not to exceed 0.2 percent by weight of polypropylene complying with § 177.1520 of this chapter in contact with food under conditions of use D through G as described in Table 2 of § 176.170(c) of this chapter, except that polypropylene containing the additive at levels not to exceed 0.075 percent by weight may contact food under conditions of use A through H described in Table 2 of § 176.170(c) of this chapter. 2. At levels not to exceed 1.0 percent by weight of of styrene block polymers complying with § 177.1810 of this chapter. The additive is used under conditions of use D through G as described in Table 2 of § 176.170(c) of this chapter. 3. At levels not to exceed 1.0 percent by weight of polystyrene and rubber modified polystyrene complying with § 177.1640 of this chapter in contact with food under conditions of use D through G as described in Table 2 of § 176.170(c) of this chapter.
* * *	* * * *

Dated: September 21, 1999.

L. Robert Lake,

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

[FR Doc. 99–25790 Filed 10–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for revised feeding instructions for use of pyrantel tartrate Type A medicated articles to make Type C medicated horse feeds.

EFFECTIVE DATE: October 5, 1999.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7543.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed supplemental NADA 140–819 that provides for revised feeding instructions for use of Pfizer's pyrantel tartrate Type A medicated articles (Strongid® 48 (48 grams of pyrantel tartrate per pound (g/lb))) to make Type C medicated horse feeds (Strongid® C (4.8 g/lb) and Strongid® C2x (9.6 g/lb)) used for the prevention of *Strongylus vulgaris* larval infections, and control of several types of adult and 4th stage larval large and small strongyle, pinworm, and ascarid infections. The supplement provides for use of a top-dressed Type C feed containing up to 20,000 g of pyrantel tartrate per ton to be fed at the currently approved rate of 1.2 milligrams per pound of body weight daily. The supplemental NADA is approved as of August 24, 1999, and § 558.485 (21 CFR 558.485) is amended to reflect the approval.

Also, § 558.485(e)(2)(i)(A) is amended to reflect that the organism *Triodontophorus* is now classified as a small strongyle.

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

The agency has determined under 21 CFR 25.33(a)(3) 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.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.485 is amended by revising paragraphs (e)(2)(i) introductory text, (e)(2)(i)(A), and the first sentence of paragraph (e)(2)(i)(B), and by adding and reserving paragraph (e)(2)(ii) to read as follows:

§ 558.485 Pyrantel tartrate.

* * * * *

(e) * * *

(2) *Horses*—(i) *Amount.* Feed continuously at the rate of 1.2 milligrams per pound (2.64 milligrams per kilogram) of body weight.

(A) *Indications for use.* Prevention of *Strongylus vulgaris* larval infections; control of adult large strongyles (*S. vulgaris*, and *S. edentatus*), adult and 4th stage larvae small strongyles (*Cyathostomum* spp., *Cylicocyclus* spp., *Cylicostephanus* spp., *Cylicodontophorus* spp., *Poteriostomum* spp., and *Triodontophorus* spp.), adult and 4th stage larvae pinworms (*Oxyuris equi*), and adult and 4th stage larvae ascarids (*Parascaris equorum*).

(B) *Limitations.* Administer either as a top-dress (not to exceed 20,000 grams per ton) or mixed in the horse's daily grain ration (not to exceed 1,200 grams per ton) during the time that the animal is at risk of exposure to internal parasites. * * *

(ii) [Reserved]

Dated: September 9, 1999.

Melanie R. Berson,

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

[FR Doc. 99–25773 Filed 10–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 78N–2646]

General and Plastic Surgery Devices; Classification of the Nonresorbable Gauze/Sponge for External Use, the Hydrophilic Wound Dressing, the Occlusive Wound Dressing, and the Hydrogel Wound Dressing

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the nonresorbable gauze/sponge for external use, the hydrophilic wound dressing, the occlusive wound dressing, and the hydrogel wound dressing into class I (general controls). FDA is also exempting these devices from premarket notification procedures. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA).

EFFECTIVE DATE: November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Gail G. Gantt, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 19, 1989 (54 FR 38600) (hereinafter referred to as the September 19, 1989 proposal), FDA issued a proposed rule to classify the following 11 devices: The nonabsorbable gauze surgical sponge for external use, the hydrophilic wound and burn dressing, the interactive wound and burn dressing, the porcine burn dressing, the intravascular catheter securement device, the medical adhesive tape, the medical adhesive bandage, the adhesive wound closure, the occlusive wound and burn dressing, the burn sheet, and the hydrogel wound and burn dressing. Four of the eleven devices (the liquid bandage, the intravascular catheter securement device, the medical adhesive tape and bandage, and the burn sheet) were already classified as general hospital and personal use devices (45 FR 1739, October 21, 1980).

In the September 19, 1989 proposal, FDA proposed that: (1) The four general hospital and personal use devices, identified above, be recodified in the Code of Federal Regulations (CFR) with the general and plastic surgery devices; (2) the medical adhesive tape and bandage be divided into four generic devices; (3) the liquid bandage be divided into two generic devices; and (4) the porcine burn dressing for short-term use be classified into class I and the porcine burn dressing for long-term use be classified into class III as the interactive wound and burn dressing. The proposals were not finalized. Based on the comments of the September 19, 1989 proposed rule, the General and Plastic Surgery Devices Panel's (the panel) recommendations, and current wound care and product use, FDA is finalizing the classification of the following four wound care devices: The nonresorbable gauze/sponge for external use, the hydrophilic wound dressing, the occlusive wound dressing, and the hydrogel wound dressing.

These final rules do not address wound dressings that contain added drugs such as antimicrobial agents, added biologics such as growth factors, or are composed of materials derived from animal sources. These are preamendments devices that FDA intends to classify in the future.

II. Comments and FDA's Responses

Interested persons were given until November 20, 1989, to comment on the September 19, 1989 proposed rule. During the comment period, FDA received following comments.

1. Two comments requested that an additional classification category be added for the nonsterile hydrogel wound and burn dressing. The nonsterile device would be for conditions such as minor cuts, scrapes, burns, and sunburn. The comment stated that components of this type of hydrogel wound and burn dressing cannot withstand sterilization.

FDA agrees that the hydrogel wound and burn dressing may be either sterile or nonsterile and has revised the final rule accordingly.

2. One comment requested that the health risk information be printed on the wrappings of the devices.

FDA believes that it is adequate that the health risk information be provided in the outer labeling of the device.

3. One comment stressed the need for price control because low-income persons generally have little or no health insurance coverage.

FDA notes that the agency has no control over the price of medical

devices and whether devices are covered by health insurance.

4. Two comments suggested that the proposed classifications were too restrictive. One comment stated that an effect of the September 19, 1989 proposed rule is that many products will have no classification and other classified devices would become unclassified. The other comment requested that the device descriptions be more generalized to include other wound dressings that do not specifically meet the proposed descriptions.

FDA is only classifying the four devices identified above at this time. While it is true that some wound dressings remain unclassified, no devices that have already been classified will ''become unclassified'' as a result of this action. The agency will consider additional wound dressing classification categories in the future.

5. Three comments suggested that nonwoven materials be included in the description of nonabsorbable gauze surgical sponge for external use.

FDA agrees with the comment and has included nonwoven materials in the nonresorbable gauze/sponge for external use identification.

6. One comment recommended that synthetic materials also be included in the description of nonabsorbable gauze surgical sponge for external use.

FDA disagrees with the comment. The agency has included synthetic materials in the identification of the hydrophilic wound dressing identification.

III. Recommendations of the Panel

Although the panel discussed wound dressings at the July 17, 1995 meeting, the panel did not make classification recommendations for any of the wound dressing devices. At the November 17, 1998 meeting, the panel discussed the classification of four of the wound dressings proposed for classification in 1989, the nonresorbable gauze/sponge for external use, the hydrophilic wound dressing, the occlusive wound dressing, and the hydrogel wound dressing. The panel unanimously recommended that these four wound dressing devices be classified into class I (general controls) and that they be exempted from premarket notification procedures (section 510(k) of the act) (21 U.S.C. 360(k)) (Ref. 1). The panel concluded that the safety and effectiveness of the four wound dressing devices can be reasonably ensured by the following general controls: (1) Registration and Listing (21 CFR part 807), (2) General Provisions of the Quality System Regulation (21 CFR part 820), (3) General Requirements for Reports (21 CFR 820.180), and Complaint Files (21 CFR 820.198).

IV. Risks to Health

The panel identified the following risks for two of the wound dressing devices: (1) The nonresorbable gauze/sponge for external use may become incorporated into a wound if its use is not monitored; and (2) the occlusive dressing may cause formation of an abscess if it is placed on an infected wound. The panel identified no specific risks to health for the hydrogel wound dressing and the hydrophilic wound dressing.

V. Summary of the Data Upon Which the Recommendation Is Based

The panel based its recommendations on expert testimony presented to the panel and on the panel members' personal knowledge of and clinical experience with the nonresorbable gauze/sponge for external use, the hydrophilic wound dressing, the occlusive wound dressing, and the hydrogel wound dressing.

VI. FDA's Conclusion

FDA has concluded that the nonresorbable gauze/sponge for external use, the hydrophilic wound dressing, the occlusive wound dressing, and the hydrogel wound dressing do not present unreasonable risks to the public health and that general controls would provide reasonable assurance of the safety and effectiveness of the devices.

On November 21, 1997, the President signed the FDAMA into law. Section 206 of the FDAMA added a new section 510(l) to the act (21 U.S.C. 360(l)), which became effective on February 19, 1998. It states that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury (hereinafter referred to as ''reserved criteria''). FDA has determined that the nonresorbable gauze/sponge for external use, the hydrophilic wound dressing, the occlusive wound dressing, and the hydrogel wound dressing do not meet the reserved criteria and, therefore, they should be exempt from the premarket notification requirements.

FDA has determined that the four general hospital and personal use devices (the liquid bandage, the intravascular catheter securement device, the medical adhesive tape and bandage, and the burn sheet) should remain codified as general hospital and personal use devices (21 CFR part 880). FDA will finalize classifications of the porcine wound dressing and the interactive wound and burn dressing in the future.

VII. Reference

The following reference has been placed on display in the Dockets Management Branch, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday

1. General and Plastic Surgery Devices Panel Meeting Transcript, November 17, 1998, pp. 1–119.

VIII. Environmental Impact

The agency has determined under 21 CFR 25.34(b) 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.

IX. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the 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 agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. As noted previously, FDA may classify devices into one of three regulatory classes according to the degree of control needed to provide reasonable assurance of safety and effectiveness. FDA is classifying these four devices into class I, the lowest level of control allowed. Under the final rule, they will be exempt from premarket notification. As unclassified preamendments devices, these devices are already effectively regulated as class

I devices. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

X. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

1. The authority citation for 21 CFR part 878 continues to read as follows:

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

2. Section 878. 4014 is added to subpart E to read as follows:

§ 878.4014 Nonresorbable gauze/sponge for external use.

(a) *Identification*. A nonresorbable gauze/sponge for external use is a sterile or nonsterile device intended for medical purposes, such as to be placed directly on a patient's wound to absorb exudate. It consists of a strip, piece, or pad made from open woven or nonwoven mesh cotton cellulose or a simple chemical derivative of cellulose. This classification does not include a nonresorbable gauze/sponge for external use that contains added drugs such as antimicrobial agents, added biologics such as growth factors, or is composed of materials derived from animal sources.

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in part 807, subpart E of this chapter subject to the limitations in § 878.9.

3. Section 878.4018 is added to subpart E to read as follows:

§ 878.4018 Hydrophilic wound dressing.

(a) *Identification*. A hydrophilic wound dressing is a sterile or non-sterile device intended to cover a wound and to absorb exudate. It consists of nonresorbable materials with hydrophilic properties that are capable of absorbing exudate (e.g., cotton, cotton derivatives, alginates, dextran, and rayon). This classification does not include a hydrophilic wound dressing that contains added drugs such as antimicrobial agents, added biologics such as growth factors, or is composed of materials derived from animal sources.

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in part 807, subpart E of this chapter subject to the limitations in § 878.9.

4. Section 878.4020 is added to subpart E to read as follows:

§ 878.4020 Occlusive wound dressing.

(a) *Identification*. An occlusive wound dressing is a nonresorbable, sterile or non-sterile device intended to cover a wound, to provide or support a moist wound environment, and to allow the exchange of gases such as oxygen and water vapor through the device. It consists of a piece of synthetic polymeric material, such as polyurethane, with or without an adhesive backing. This classification does not include an occlusive wound dressing that contains added drugs such as antimicrobial agents, added biologics such as growth factors, or is composed of materials derived from animal sources.

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in part 807, subpart E of this chapter subject to the limitations in § 878.9.

5. Section 878.4022 is added to subpart E to read as follows:

§ 878.4022 Hydrogel wound dressing and burn dressing.

(a) *Identification*. A hydrogel wound dressing is a sterile or non-sterile device intended to cover a wound, to absorb wound exudate, to control bleeding or fluid loss, and to protect against abrasion, friction, desiccation, and contamination. It consists of a nonresorbable matrix made of hydrophilic polymers or other material in combination with water (at least 50 percent) and capable of absorbing exudate. This classification does not include a hydrogel wound dressing that contains added drugs such as antimicrobial agents, added biologics such as growth factors, or is composed of materials derived from animal sources.

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in part 807, subpart E of this chapter subject to the limitations in § 878.9.

Dated: September 21, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–25791 Filed 10–4–99; 8:45 am]

BILLING CODE 4160–01–F

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: By notice published April 13, 1999 (64 FR 17988) the Agency proposed amendment of existing au pair regulations in order to strengthen the oversight and general accountability of the au pair program and to identify and reduce the potential risk of injury to program participants. The proposed amendments will provide greater specificity regarding the selection and orientation of both host family and au pair participants, thereby enhancing the prospect for more informed participation by both parties. Further proposed program enhancements would require disclosure of prior experience for au pair participants providing child care for special needs children. An amendment to provide for uniform program audits was also proposed. A thirty day public comment period was provided and twenty comments were received by the Agency. These twenty comments all supported the proposed rule as written. Accordingly, the proposed rule is hereby adopted as final without change.

DATES: This rule is effective October 5, 1999.

FOR FURTHER INFORMATION CONTACT: Sally Lawrence, Branch Chief, Program Designation Branch, Exchange Visitor Services, 301 4th Street, S.W., Washington, D.C. 20547; telephone, (202) 401–9800.

List of Subjects in 22 CFR Part 514

Cultural exchange program, Reporting and recordkeeping requirements.

Dated: September 28, 1999.

Les Jin,

General Counsel.

Accordingly, 22 CFR part 514 is amended as follows:

PART 514—EXCHANGE VISITOR PROGRAM

1. The authority citation for part 514 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(j), 1182, 1258; 22 U.S.C. 1421–1442, 2451–2460; Reorganization Plan No. 2 of 1977, 42 FR 62461, 3 CFR, 1977 Comp. p. 200; E.O. 12048, 43 FR 13361, 3 CFR, 1978 Comp. p. 168; USIA Delegation Order No. 85–5 (50 FR 27393).

2. Section 514.31 paragraph (e), (f), (h), (i), and (m) are revised to read as follows:

§ 514.31 Au pairs.

* * * * *

(e) *Au pair placement.* Sponsors shall secure, prior to the au pair's departure from the home country, a host family placement for each participant. Sponsors shall not:

(1) Place an au pair with a family unless the family has specifically agreed that a parent or other responsible adult will remain in the home for the first three days following the au pair's arrival;

(2) Place an au pair with a family having a child aged less than three months unless a parent or other responsible adult is present in the home;

(3) Place an au pair with a host family having children under the age of two, unless the au pair has at least 200 hours of documented infant child care experience;

(4) Place an au pair with a host family having a special needs child, as so identified by the host family, unless the au pair has specifically identified his or her prior experience, skills, or training in the care of special needs children and the host family has reviewed and acknowledged in writing the au pair's prior experience, skills, or training so identified;

(5) Place the au pair with a family unless a written agreement between the au pair and host family outlining the au pair's obligation to provide not more than 45 hours of child care services per week has been signed by both;

(6) Place the au pair with a family who cannot provide the au pair with a suitable private bedroom; and

(7) Place an au pair with a host family unless the host family has interviewed the au pair by telephone prior to the au pair's departure from his or her home country.

(f) *Au pair orientation.* In addition to the orientation requirements set forth at § 514.10, all sponsors shall provide au pairs, prior to their departure from the home country, with the following information:

(1) A copy of all operating procedures, rules, and regulations, including a grievance process, which govern the au pair's participation in the exchange program;

(2) A detailed profile of the family and community in which the au pair will be placed;

(3) A detailed profile of the educational institutions in the community where the au pair will be placed, including the financial cost of attendance at these institutions;

(4) A detailed summary of travel arrangements; and

(5) A copy of the Agency's written statement and brochure regarding the au pair program.

* * * * *

(h) *Host family selection.* Sponsors shall adequately screen all potential host families and at a minimum shall:

(1) Require that the host parents are U.S. citizens or legal permanent residents;

(2) Require that host parents are fluent in spoken English;

(3) Require that all adult family members resident in the home have been personally interviewed by an organizational representative;

(4) Require that host parents and other adults living full-time in the household have successfully passed a background investigation including employment and personal character references;

(5) Require that the host family have adequate financial resources to undertake all hosting obligations;

(6) Provide a written detailed summary of the exchange program and the parameters of their and the au pair's duties, participation, and obligations; and

(7) Provide the host family with the prospective au pair participant's complete application, including all references.

(i) *Host family orientation.* In addition to the requirements set forth at § 514.10 sponsors shall:

(1) Inform all host families of the philosophy, rules, and regulations governing the sponsor's exchange program and provide all families with a copy of the Agency's written statement and brochure regarding the au pair program;

(2) Provide all selected host families with a complete copy of Agency-promulgated Exchange Visitor Program regulations, including the supplemental information thereto;

(3) Advise all selected host families of their obligation to attend at least one family day conference to be sponsored by the au pair organization during the course of the placement year. Host family attendance at such a gathering is a condition of program participation and failure to attend will be grounds for possible termination of their continued or future program participation; and

(4) Require that the organization's local counselor responsible for the au pair placement contacts the host family and au pair within forth-eight hours of the au pair's arrival and meets, in person, with the host family and au pair within two weeks of the au pair's arrival at the host family home.

* * * * *

(m) *Reporting requirements.* Along with the annual report required by regulations set forth at § 514.17, sponsors shall file with the Agency the following information:

(1) A summation of the results of an annual survey of all host family and au pair participants regarding satisfaction with the program, its strengths and weaknesses;

(2) A summation of all complaints regarding host family or au pair participation in the program, specifying the nature of the complaint, its resolution, and whether any unresolved complaints are outstanding;

(3) A summation of all situations which resulted in the placement of au pair participant with more than one host family;

(4) A report by a certified public accountant, conducted pursuant to a format designated by the Agency, attesting to the sponsor's compliance with the procedures and reporting requirements set forth in this subpart;

(5) A report detailing the name of the au pair, his or her host family placement, location, and the names of the local and regional organizational representatives; and

(6) A complete set of all promotional materials, brochures, or pamphlets distributed to either host family or au pair participants.

[FR Doc. 99–25690 Filed 10–4–99; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

Introduction to FHA Programs

CFR Correction

In Title 24 of the Code of Federal Regulations, parts 200 to 499, revised as of Apr. 1, 1999, on page 73, the editorial note following § 200.1302 is removed.

[FR Doc. 99–55532 Filed 10–4–99; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK21–1709; FRL–6450–8]

Approval and Promulgation of State Implementation Plan: Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; withdrawal.

SUMMARY: Due to a correction and clarification, EPA is withdrawing the direct final rule for the approval of various amendments to the carbon monoxide (CO) State Implementation Plan for Alaska. The original action was published in the **Federal Register** on September 1, 1999 (64 FR 47674), as a direct final rule. EPA will correct and clarify its approval of Alaska's transportation conformity program. As stated in the **Federal Register** document, if the direct final rule is withdrawn, timely notice of withdrawal would be published in the **Federal Register**. EPA is withdrawing the direct final rule and will address the correction and clarification when it republishes the direct final action in the near future. Another public comment period will be offered when it is republished.

DATES: This direct final rule is withdrawn as of October 5, 1999.

FOR FURTHER INFORMATION CONTACT: Montel Livingston, Office of Air Quality (OAQ–107), EPA, Region 10, 1200 6th Avenue, Seattle, WA 98101, (206–553–0180).

List of Subjects in 40 CFR Part 52

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

Dated: September 23, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 99–25710 Filed 10–4–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR,

1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alaska: Unorganized Borough (FEMA Docket No. 7284).	Municipality of Anchorage.	Mar. 24, 1999, Mar. 31, 1999, *Anchorage Daily News*.	The Honorable Rick Mystrom, mayor, municipality of Anchorage P.O. Box 196650, Anchorage, Alaska 99519–06650.	Feb. 19, 1999	020005
California: Placer (FEMA Docket No. 7284).	City of Rocklin	Mar. 24, 1999, Mar. 31, 1999, *The Placer Herald*.	The Honorable Connie Cullivan, mayor, City of Rocklin, 3980 Rocklin Road, Rocklin, California 95677.	Feb. 22, 1999	060242
California: Riverside (FEMA Docket No. 7284).	City of San Diego	Apr. 7, 1999, Apr. 14, 1999, *San Diego Union-Tribune*.	The Honorable Susan Golding, mayor, city of San Diego, 202 C Street, 11th Floor (MS 11A), San Diego, California 92101.	Mar. 16, 1999	060295
Colorado: Denver (FEMA Docket No. 7284).	City and County ...	Mar. 17, 1999, Mar. 24, 1999, *The Denver Post*.	The Honorable Wellington Webb, mayor, city and county of Denver, 1437 Bannock Street, Denver, Colorado 80202.	Feb. 12, 1999	080046
Colorado: Lincoln (FEMA Docket No. 7284).	Town of Limon	Mar. 11, 1999, Mar. 18, 1999, *Limon Leader*.	The Honorable Ted Bandy, mayor, town of Limon, P.O. Box 9, Limon, Colorado 80282–0009.	Feb. 23, 1999	080109
Hawaii: Hawaii (FEMA Docket No. 7284).	Unincorporated areas.	Mar. 11, 1999, Mar. 18, 1999, *Hawaii-Tribune Herald*.	The Honorable Stephen K. Yamashiro, mayor, Hawaii County, 25 Aupuni Street, Hilo, Hawaii 96720.	Feb. 5, 1999	155166
Nevada: Clark (FEMA Docket No. 7284).	City of Las Vegas	Mar. 18, 1999, Mar. 25, 1999, *Las Vegas Review-Journal*.	The Honorable Jan Laverty Jones, mayor, city of Las Vegas, 400 East Stewart Avenue, North Las Vegas, Nevada 89101–2986.	June 23, 1999	325276
Nevada: Clark (FEMA Docket No. 7284).	Unincorporated areas.	Mar. 18, 1999, Mar. 25, 1999, *Las Vegas Review-Journal*.	The Honorable Yvonne Atkinson Gates, chairperson, Clark County Board of Supervisors, 500 Grand Central Parkway, Las Vegas, Nevada 89155.	June 23, 1999	32003
Nevada: Clark (FEMA Docket No. 7284).	City of North Las Vegas.	Mar. 18, 1999, Mar. 25, 1999, *Las Vegas Review-Journal*.	The Honorable Michael Montandor, mayor, city of North Las Vegas, P.O. Box 4086, North Las Vegas, Nevada 89036.	June 23, 1999	320007
Nevada: Washoe (FEMA Docket No. 7284).	City of Reno	Mar. 24, 1999, Mar. 31, 1999, *Reno Gazette-Journal*.	The Honorable Jeff Griffin, mayor, city of Reno, P.O. Box 1900, Reno, Nevada 89505.	Mar. 1, 1999	320020
Nevada: Washoe (FEMA Docket No. 7284).	Unincorporated areas.	Mar. 24, 1999, Mar. 31, 1999, *Reno Gazette-Journal*.	The Honorable Joanne Bond, chairperson, Washoe County Board of Supervisors, P.O. Box 11130, Reno, Nevada 89520.	Mar. 1, 1999	320019
New Mexico: Santa Fe (FEMA Docket No. 7284).	City of Santa Fe ..	Mar. 9, 1999, Mar. 16, 1999, *The Santa Fe New Mexican*.	The Honorable Larry Delgado, mayor, city of Santa Fe, P.O. Box 909, 200 Lincoln Avenue, Santa Fe, New Mexico 87504.	June 14, 1999	350070.
Oklahoma: Garfield (FEMA Docket No. 7288).	City of Enid	Apr. 23, 1999, Apr. 30, 1999, *Enid News and Eagle*.	The Honorable Mike Cooper, mayor, city of Enid, P.O. Box 1768, Enid, Oklahoma 73702.	Mar. 26, 1999	400062
Oklahoma: Oklahoma (FEMA Docket No. 7284).	City of Oklahoma City.	Mar. 18, 1999, Mar. 25, 1999, *Daily Oklahoman*.	The Honorable Kirk Humphreys, mayor, city of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	Feb. 12, 1999	405378
Oregon: Multnomah (FEMA Docket No. 7284).	City of Portland	Mar. 19, 1999, Mar. 26, 1999, *The Oregonian*.	The Honorable Vera Katz, mayor, city of Portland, 1221 Southwest Fourth Avenue, room 340, Portland, Oregon 97204.	Mar. 1, 1999	410183
Texas: Brazos (FEMA Docket No. 7288).	City of College Station.	Apr. 21, 1999, Apr. 28, 1999, *Bryan-College Station Eagle*.	The Honorable Lynn McIlhaney, mayor, city of College Station, P.O. Box 9960, College Station, Texas 77842–0960.	Mar. 26, 1999	480083
Texas: Bexar (FEMA Docket No. 7284).	City of Converse ..	Mar. 11, 1999, Mar. 18, 1999, *Herald Newspaper*.	The Honorable John Steinberg, mayor, city of Converse, P.O. Box 36, Converse, Texas 78109.	Feb. 12, 1999	480038

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Dallas, Denton, Collin, Rockwall, and Kaufman (FEMA Docket No. 7284).	City of Dallas	Mar. 19, 1999, Mar. 26, 1999, *Dallas Morning News*.	The Honorable Ron Kirk, mayor, city of Dallas, City Hall, 1500 Marilla, Dallas, Texas 75201.	Feb. 26, 1999	480171
Texas: Tarrant (FEMA Docket No. 7284).	City of Fort Worth	Mar. 18, 1999, Mar. 25, 1999, *Fort Worth Star-Telegram*.	The Honorable Kenneth Barr, mayor, city of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	Feb. 26, 1999	480596
Texas: Dallas and Collin (FEMA Docket No. 7284).	City of Garland	Mar. 25, 1999, Apr. 1, 1999, *Garland News*.	The Honorable Jim Stence, mayor, city of Garland, 200 North Fifth Street, Garland Texas 75040.	Feb. 26, 1999	485471
Texas: Dallas (FEMA Docket No. 7284).	City of Irving	Mar. 4, 1999, Mar. 11, 1999, *Irving News*.	The Honorable Morris H. Parrish, mayor, city of Irving, P.O. Box 152288, Irving, Texas 75015–2288.	Feb. 1, 1999	480180
Texas: Tarrant (FEMA Docket No. 7284).	City of North Richland Hills.	Apr. 8, 1999, Apr. 15, 1999, *Fort Worth Star-Telegram*.	The Honorable Charles Scoma, mayor, city of North Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182–0609.	Mar. 16, 1999	480607
Texas: Lamar (FEMA Docket No. 7284).	City of Paris	Mar. 23, 1999, Mar. 30, 1999, *Paris News*.	The Honorable Eric Clifford, mayor, city of Paris, P.O. Box 9037, Paris, Texas 75461–9037.	June 28, 1999	480427
Texas: Wichita (FEMA Docket No. 7284).	City of Wichita Falls.	Mar. 19, 1999, Mar. 26, 1999, *Wichita Falls Times/Record News*.	The Honorable Kay Yeager, mayor, city of Wichita Falls, 1300 Seventh Street, Wichita Falls, Texas 76301.	Feb. 26, 1999	480662
Washington: Grays Harbor (FEMA Docket No. 7284).	City of Aberdeen	Feb. 26, 1999, Mar. 5, 1999, *The Daily World*.	The Honorable Chuck Gurrard, mayor, city of Aberdeen, 200 East Market Street, Aberdeen, Washington 98520.	Sept. 3, 1999	530058
Washington: Spokane (FEMA Docket No. 7284).	Unincorporated areas.	Mar. 24, 1999, Mar. 31, 1999, *Spokesman-Review*.	The Honorable Kate McCaslin, chairperson, Spokane County Board of Commissioners, 1116 West Broadway Avenue, Spokane, Washington 99260–0100.	Feb. 24, 1999	530174
Wyoming: Carbon (FEMA Docket No. 7284).	Town of Baggs	Mar. 16, 1999, Mar. 23, 1999, *Rawling Daily*.	The Honorable Donald R. Bain, mayor, town of Baggs, P.O. Box 300, Baggs, Wyoming 82321.	Feb. 19, 1999	560009

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: September 27, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–25809 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7296]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in

effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Coconino	City of Flagstaff ...	July 8, 1999, July 15, 1999, *Arizona Daily Sun.*	The Honorable Christopher J. Bavasi, mayor city of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	June 4, 1999	040020
Arizona: Pima	City of Tucson	June 8, 1999, June 15, 1999, *Tucson Citizen.*	The Honorable George Miller, mayor, city of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	May 11, 1999	040076
Arkansas: Saline ...	Unincorporated areas.	June 17, 1999, June 24, 1999, *Benton Courier.*	The Honorable Lanny Fite, Saline County judge, 200 North Main, room 116, Benton, Arkansas 72015.	May 7, 1999	050191
California: Orange	City of Irvine	June 8, 1999, June 15, 1999, *Orange County Register.*	The Honorable Christina Shea, major, city of Irvine, P.O. Box 19575, Irvine, California 92623.	Sept. 13, 1999	060222
California: Orange	City of Placentia ..	July 8, 1999, July 15, 1999, *Placentia News-Times.*	The Honorable Constance Underhill, mayor, city of Placentia, 410 East Chapman Avenue, Placentia, California 92870.	June 9, 1999	060229
California: Sacramento.	Unincorporated areas.	July 7, 1999, July 14, 1999, *Sacramento Bee.*	The Honorable Illa Collin, chairperson, Sacramento County Board of Supervisors, 700 H Street, room 2450, Sacramento, California 95814.	Oct. 12, 1999	060262
California: San Diego.	City of San Diego	June 18, 1999, June 25, 1999, *San Diego Daily Transcript.*	The Honorable Susan Golding, mayor, city of San Diego 202 C Street, 11th floor, San Diego, California 92101.	May 25, 1999	060295
California: San Diego.	Unincorporated areas.	July 15, 1999, July 22, 1999, *San Diego Union-Tribune.*	The Honorable Pam Slater, chairperson, San Diego County Board of Supervisors, 1600 Pacific Highway, room 335, San Diego, California 92101.	June 22, 1999	060289
California: Ventura	City of Simi Valley	June 22, 1999, June 29, 1999, *Ventura County Star.*	The Honorable Bill Davis, mayor, city of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, California 93063–2199.	May 26, 1999	060421
California: Orange	City of Tustin	June 8, 1999, June 15, 1999, *Orange County Register.*	The Honorable Thomas Saltarelli, mayor, city of Tustin, 300 Centennial Way, Tustin, California 92780.	Sept. 13, 1999	060235
Colorado: Summit	Town of Frisco	June 18, 1999, June 25, 1999, *Breckenridge Summit County Journal.*	The Honorable M.L. Etie, mayor, town of Frisco, P.O. Box 4100, Frisco, Colorado 80443.	May 14, 1999	080245

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Iowa: Story	City of Ames	June 23, 1999, June 30, 1999, *The Tribune*.	The Honorable Ted Tedesco, mayor, city of Ames, 515 Clark Avenue, Ames, Iowa 50010.	Sept. 28, 1999	190254
Kansas: Sedgwick	City of Haysville	June 21, 1999, June 28, 1999, *Haysville Times*.	The Honorable Tim Norton, mayor, city of Haysville, 200 West Grand, Haysville, Kansas 67060.	May 20, 1999	200324
Kansas: Johnson	City of Prairie Village.	July 9, 1999, July 16, 1999, *The Sun*.	The Honorable Ronald Schaffer, mayor, city of Prairie Village, 7700 Mission Road, Prairie Village, Kansas 66208.	June 15, 1999	200175
Kansas: Sedgwick	Unincorporated Areas.	June 21, 1999, June 28, 1999, *Wichita Eagle*.	The Honorable William Hancock, chairman, Board of Commissioners, Sedgwick County, 525 North Main, Wichita, Kansas 67203.	May 20, 1999	200321
Kansas: Sedgwick	Unincorporated Areas.	June 30, 1999, July 7, 1999, *Wichita Eagle*.	The Honorable William Hancock, chairman, Board of Commissioners, Sedgwick County, 525 North Main, Wichita, Kansas 67203.	May 27, 1999	200321
Kansas: Sedgwick	City of Wichita	June 22, 1999, June 29, 1999, *Wichita Eagle*.	The Honorable Bob Knight, mayor, city of Wichita, 455 North Main Street, fist floor, Wichita, Kansas 67202.	May 20, 1999	200328
Kansas: Sedgwick	City of Wichita	June 30, 1999, July 7, 1999, *Wichita Eagle*.	The Honorable Bob Knight, mayor, city of Wichita, 455 North Main Street, first floor, Wichita, Kansas 67202.	May 27, 1999	200328
Missouri: St. Louis	City of Maryland Heights.	June 15, 1999, June 22, 1999, *St. Louis Countain*.	The Honorable Michael O'Brien, mayor, city of Maryland Heights, 212 Millwell Drive, Maryland Heights, Missouri 63043.	Sept. 20, 1999	290889
North Dakota: Cass	City of Fargo	June 22, 1999, June 29, 1999, *The Forum*.	The Honorable Bruce Furness, mayor, city of Fargo, City Hall, 200 Third Street North, Fargo, North Dakota 58102–4809.	May 21, 1999	385364
Oklahoma: Oklahoma.	City of Oklahoma City.	June 18, 1999, June 25, 1999, *Daily Oklahoman*.	The Honorable Kirk Humphreys, mayor, city of Oklahoma City, 200 North Walker, suite 302, Oklahoma City, Oklahoma 73102.	May 27, 1999	405378
Oklahoma: Tulsa	City of Tulsa	June 11, 1999, June 18, 1999, *Tulsa World*.	The Honorable M. Susan Savage, mayor, city of Tulsa, City Hall, 200 Civic Center, Tulsa, Oklahoma 74013.	Sept. 16, 1999	405381
Oregon: Clackamas	City of Milwaukee	June 24, 1999, July 1, 1999, *The Oregonian*.	The Honorable Carolyn Tomei, mayor, city of Milwaukee, 10722 Southeast Main Street, Milwaukee, Oregon 97222.	May 21, 1999	410019
South Dakota: Minnehaha.	Unincorporated areas.	June 18, 1999, June 25, 1999, *Argus Leader*.	The Honorable Robert Kolbe, chairman, Minnehaha County Commissioners, 415 North Dakota Avenue, Sioux Falls, South Dakota 57104–2465.	May 21, 1999	460057
Texas: Tarrant	City of Arlington	June 15, 1999, June 22, 1999, *Fort Worth Star-Telegram*.	The Honorable Elzie Odom, mayor, city of Arlington, P.O. Box 231, Arlington, Texas 76004–0231.	Sept. 20, 1999	485454
Texas: Tarrant	City of Arlington	July 9, 1999, July 16, 1999, *Fort Worth Star-Telegram*.	The Honorable Elzie Odom, mayor, city of Arlington, P.O. Box 231, Arlington, Texas 76004–0231.	June 11, 1999	485454
Texas: Travis	City of Austin	June 22, 1999, June 29, 1999, *Austin American-Statesman*.	The Honorable Kirk Watson, mayor, city of Austin, 124 West Eighth Street, Austin, Texas 78701.	May 27, 1999	480624
Texas: Williamson	City of Cedar Park	July 7, 1999, July 14, 1999, *Hill Country News*.	The Honorable George Denny, mayor, city of Cedar Park, 600 North Bell Boulevard, Cedar Park, Texas 78613.	Oct. 12, 1999	481282
Texas: Tarrant	City of Colleyville	June 11, 1999, June 18, 1999, *Fort Worth Star-Telegram*.	The Honorable Richard Newton, mayor, city of Colleyville, P.O. Box 185, Fort Worth, Texas 76034–0185.	May 19, 1999	480590

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Dallas	City of Farmers Branch.	July 23, 1999, July 30, 1999, *Dallas Morning News*.	The Honorable Bob Phelps, mayor, city of Farmers Branch, P.O. Box 819010, Farmers Branch, Texas 75381–9010.	June 23, 1999	480174
Texas: Tarrant	City of Fort Worth	June 15, 1999, June 22, 1999, *Fort Worth Star-Telegram*.	The Honorable Kenneth Barr, mayor, city of Fort Worth, City Hall, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	Sept. 20, 1999	480596
Texas: Tarrant	City of Fort Worth	June 23, 1999, June 30, 1999, *Fort Worth Star—Telegram*.	The Honorable Kenneth Barr, mayor, city of Fort Worth, City Hall, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	May 20, 1999	480596
Texas: Collin	City of Frisco	June 11, 1999, June 18, 1999, *Frisco Enterprise*.	The Honorable Kathy Seei, mayor, city of Frisco, City Hall, P.O. Box 1100, Frisco, Texas 75034.	May 21, 1999	480134
Texas: Dallas and Collin.	City of Garland	June 24, 1999, July 1, 1999, *Garland News*.	The Honorable Jim Stence, mayor, city of Garland, 200 North Fifth Street, Garland, Texas 75040.	May 21, 1999	485471
Texas: Galveston ..	City of League City.	June 18, 1999, June 25, 1999, *Galveston Daily News*.	The Honorable A. Tommy Frankovich, mayor, city of League City, City Hall, 300 West Walker, League City, Texas 77573.	May 19, 1999	485488
Texas: Williamson	City of Leander	July 7, 1999, July 14, 1999, *Hill Country News*.	The Honorable Charles E. Eaton, mayor, city of Leander, P.O. Box 319, Leander, Texas 78646.	Oct. 12, 1999	481282
Texas: Tarrant	Unincorporated areas.	June 11, 1999, June 18, 1999, *Fort Worth Star-Telegram*.	The Honorable Tom Vandergriff, Tarrant County Judge, 100 East Weatherford Street, Fort Worth, Texas 76196–0601.	May 19, 1999	480582
Washington: Spokane.	Unincorporated areas.	June 8, 1999, June 15, 1999, *Spokesman-Review*.	The Honorable Kate McCaslin, chairperson, Spokane County Board of Commissioners, 1116 West Broadway Avenue, Spokane, Washington 99260–0100.	Sept. 13, 1999	530174

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: September 27, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–25808 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7297]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any

existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community no.
Georgia: Cherokee	Unincorporated Areas.	August 11, 1999, August 18, 1999, *Cherokee Tribune*.	Ms. Emily Lemecke, Chairwoman of the Cherokee County Board of Commissioners, 90 North Street, Suite 310, Canton, Georgia 30114.	Nov. 16, 1999	130424 C
Georgia: Cherokee	City of Woodstock	August 11, 1999, August 18, 1999, *Cherokee Tribune*.	The Honorable David Rogers, Mayor of the City of Woodstock, 103 Arnold Mill Road, Woodstock, Georgia 30188.	Nov. 16, 1999	130264 C
Illinois: Lee	City of Dixon	August 18, 1999, *The Telegraph*.	The Honorable James Burke, Mayor of the City of Dixon, City Hall, 121 West Second Street, Dixon, Illinois 61021.	Sept. 17, 1999	170417
Illinois: DuPage	Village of Glen Ellyn.	August 25, 1999, September 1, 1999, *The Glen Ellyn News*.	Mr. Joseph Wark, Village of Glen Ellyn President, 535 Duane Street, Glen Ellyn, Illinois 60137.	Nov. 30, 1999	170207 C
Indiana: Jackson ..	City of Seymour ...	August 24, 1999, August 31, 1999, *The Tribune*.	The Honorable John Burkhart, Mayor of the City of Seymour, 301 North Chestnut Street, Seymour, Indiana 47274.	Nov. 29, 1999	180099 C
Minnesota: St. Louis.	City of Cook	August 12, 1999, August 19, 1999, *Cook News Herald*.	The Honorable Harold Johnston, Mayor of the City of Cook, City Hall, P.O. Box 155, Cook, Minnesota 55723.	Aug. 4, 1999	270420 A
New Jersey: Union	City of Linden	August 19, 1999, August 26, 1999, *Spectator Leader*.	The Honorable John T. Gregorio, Mayor of the City of Linden, City Hall, 301 Northwood Avenue, Linden, New Jersey 07036.	Aug. 10, 1999	340467 B
Ohio: Licking	City of Newark	July 14, 1999, July 21, 1999, *The Advocate*.	The Honorable Frank L. Stare, Mayor of the City of Newark, 40 West Main Street, Newark, Ohio 43055.	Oct. 19, 1999	390335E
Pennsylvania: Bucks.	Township of Upper Makefield.	August 31, 1999, September 7, 1999, *Bucks County Courier Times*.	Ms. Rose Marie Sauter, Chairperson of the Board of Supervisors, Township of Upper Makefield, 1076 Eagle Road, Newtown, Pennsylvania 18940.	Aug. 25, 1999	420207 F
Commonwealth of Puerto Rico.	Puerto Rico	August 13, 1999, August 20, 1999, *El Nuevo Dia*.	Mr. Jose R. Caballero-Mercado, Chairman, Puerto Rico Planning Board, Minillas Government Center, North Building, De Diego Avenue, Stop 22, P.O. Box 4119, San Juan, Puerto Rico 00940–1119.	Nov. 18, 1999	720000 B

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community no.
Virginia (Independent City).	City of Winchester	August 20, 1999, August 27, 1999, *The Winchester Star*.	Mr. Edwin C. Daley, City of Winchester Manager, Rouss City Hall, 15 Cameron Street, Winchester, Virginia 22601.	Aug. 13, 1999	510173 B

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: September 27, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–25803 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
COLORADO	
El Paso County and Incorporated Areas (FEMA Docket No. 7286)	
Calhan Main Channel:	
Approximately 40 feet downstream of McClasky Road	*6,485
Approximately 3,740 feet upstream of Eighth Street	*6,548
Calhan East Tributary:	
At confluence of Calhan Main Channel	*6,525
Approximately 3,140 feet upstream of confluence of Calhan Main Channel	*6,565
Calhan Fairground Tributary:	
Approximately 550 feet downstream of Denver Street	*6,533
Approximately 810 feet upstream of Boulder Street ...	*6,561
Maps are available for inspection at the Regional Building, 101 West Costilla Avenue, Colorado Springs, Colorado.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for inspection at the Town of Calhan Town Hall, 556 Colorado Avenue, Calhan, Colorado.	
TEXAS	
Brazoria County and Incorporated Areas (FEMA Docket No. 7242)	
Clear Creek:	
Just upstream of Country Club Drive	+39
Approximately 1,000 feet upstream of Mykawa Road	+47
Approximately 800 feet upstream of South Freeway	+58
Chigger Creek:	
Just upstream of State Highway 35	++39
Just downstream of Atchison Topeka & Santa Fe Railway	++41
Chigger Creek Bypass:	
At divergence from Chigger Creek	++40
Cowart Creek:	
Just upstream of FM 2351	++33
Just upstream of State Highway 35	++44
Just upstream of County Road 827	++55
Marys Creek:	
Approximately 200 feet upstream of FM 518	++41
Just upstream of State Highway 35	++48
Approximately 2,500 feet upstream of FM 1128	++55
Just downstream of Old Chocolate Bayou Road	None
Hickory Slough:	
Just downstream of Old Alvin Road	+45
Just downstream of Garden Road (County Road 109)	++51
Approximately 2,000 feet upstream of Cullen Boulevard (FM 518)	++55
Marys Creek Bypass:	
Just upstream of Brazoria/Galveston County Boundary	++29
Approximately 3,500 feet downstream of County Road 963	++37
League City (City), Galveston and Harris Counties (FEMA Docket No. 7242)	
Clear Creek:	
Approximately 4,300 feet upstream of Interstate 45/75	+14
Unnamed Tributary to Clear Creek:	
At confluence with Clear Creek	+14
Approximately 800 feet upstream of Parker Road	+14
Magnolia Creek:	
At confluence with Clear Creek	+16
Approximately 500 feet upstream of FM 518	+16
Friendswood (City), Galveston and Harris Counties (FEMA Docket No. 7242)	
Clear Creek:	
Just downstream of Whispering Pines Avenue	+22
Just upstream of Edgewood Drive	+26
Chigger Creek:	
Just upstream of confluence with Clear Creek	+17
Just downstream of Windwood Drive	++30
Just downstream of Saint Cloud Drive	++34
Chigger Creek Bypass:	
At confluence with Chigger Creek	++32
Cowart Creek:	
At confluence with Clear Creek	+21
Cedar Gully:	
At confluence with Clear Creek	+24
Just downstream of Blackhawk Boulevard	+24
Marys Creek:	
At confluence with Clear Creek	+24
Just upstream of Winding Road	+28
Turkey Creek:	
At confluence with Clear Creek	+28
Tributary 0.16 to Turkey Creek:	
At confluence with Turkey Creek	+28
Approximately 2,400 feet upstream of confluence with Turkey Creek	+28
Halls Road Ditch:	
At confluence with Clear Creek	+29
+NGVD–1973 Releveling	
++NGVD–1978 Releveling	
Maps are available for inspection at the City of League City Engineering Building, c/o Mr. Bob Williams, 300 West Walker, League City, Texas.	
Maps are available for inspection at the City of Friendswood Public Works Building, 1306 Deepwood Drive, Friendswood, Texas.	
Maps are available for inspection at the City of Pearland Permits Department, City Hall, 3519 Liberty Drive, Pearland, Texas.	
Maps are available for inspection at the City of Brookside Village City Hall, 6243 Brookside Road, Brookside Village, Texas.	
Maps are available for inspection at the Brazoria County Courthouse, 111 East Locust Street, Angelton, Texas.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: September 27, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–25807 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–04–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified

base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
FLORIDA	
Escambia County (Unincorporated Areas) (FEMA Docket No. 7283)	
Gulf of Mexico:	
Approximately 1.93 miles east of Pensacola Beach-Santa Rosa Island Authority/Escambia County eastern boundary along Gulf of Mexico	*16
Approximately 200 feet north of intersection of Sandy Key Road and State Route 292	*10
Santa Rosa Sound:	
Approximately 500 feet east of Pensacola Beach-Santa Rosa Island Authority/ Escambia County eastern boundary near Big Sabine Point	*12
Approximately 3,000 feet south of the tip of Big Sabine Point	*11
Pensacola Bay:	
At the intersection of Burlington Northern Railroad and Redoust Narva Road	*7
Approximately 1,000 feet west of the intersection of State Road 399/Ft. Pickens Road and Via De Luna	*12
Big Lagoon:	
Approximately 3,600 feet south of western tip of Sherman Cove	*12
Approximately 350 feet south of intersection of Gulf Beach Highway and Constance Street	*8
Approximately 1,400 feet south of eastern tip of Sherman Cove	*10
Jones Creek:	
Approximately 500 feet east of the point where North Navy Boulevard crosses Jones Creek	*7
Maps available for inspection at the Escambia County Office of Development Services, 1190 West Leonard Street, Pensacola, Florida 32501–1129.	
Gulf Breeze (City), Santa Rosa County (FEMA Docket No. 7283)	
Santa Rosa Sound:	
At the intersection of Deerpoint Circle and Deerpoint Drive	*12
Approximately 0.4 mile west on Gulf Breeze Parkway from the intersection of Bayshore Road and Gulf Breeze Parkway	*8
Pensacola Bay:	
Approximately 1,600 feet northwest of the intersection of Fairpoint Drive and Shoreline Drive	*10
Approximately 700 feet east of the intersection of Cadiz Street and Cordoba Street	*6
Maps available for inspection at the Gulf Breeze City Hall, 1070 Shoreline Drive, Gulf Breeze, Florida.	
Pensacola (City), Escambia County (FEMA Docket No. 7283)	
Pensacola Bay:	
West of Pensacola Bay Bridge	*11
At the intersection of Intendencia Street and North 9th Avenue	*7
Maps available for inspection at the City of Pensacola Inspections Department, 180 Governmental Center, 5th Floor, Pensacola, Florida.	
Pensacola Beach-Santa Rosa Island Authority (Escambia County) (FEMA Docket No. 7283).	
Gulf of Mexico:	
sacola Beach-Santa Rosa Island Authority Escambia County east boundary at Gulf of Mexico	*16
At the intersection of Ariola Drive and Avenida 11	*11
Santa Rosa Sound:	
Approximately 600 feet north of intersection of Via De Luna and Avenida 11.	
At the intersection of Via De Luna and Avenida 11.	
Maps available for inspection at the Santa Rosa Island Authority, 7 Via Luna, Pensacola Beach, Florida.	
Santa Rosa County (Unincorporated Areas) (FEMA Docket No. 7283)	
Gulf of Mexico:	
Approximately 1.6 miles south of the intersection of U.S. Route 98 (Gulf Breeze Parkway) and Calle of Palencia	*16
Approximately 1.5 miles south of the intersection of U.S. Route 98 (Gulf Breeze Parkway) and Belle Meade Circle	*11
Santa Rosa Sound:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 500 feet south of the intersection of Avenger Drive and North Shores Drive	*12
Approximately 3,400 feet south of the intersection of U.S. Route 98 (Gulf Breeze Parkway) and Mohawk Trail	*8
Maps available for inspection at the Santa Rosa County Administration Building, 6495 Caroline Street, Milton, Florida.	
Walton County (Unincorporated Areas) (FEMA Docket No. 7283)	
Gulf of Mexico:	
Shoreline approximately 550 feet south of intersection of Seacrest Drive and County Route 30–A	*16
Entire shoreline of Morrison Lake	*8
Approximately 800 feet northeast of intersection of Lakeshore Drive and Earl Road	*10
Choctawhatchee Bay:	
Approximately 300 feet north of intersection of Bayshore Drive and Geronomo Street	*7
Approximately 1,800 feet south of Marsh Drive and State Route 20	*10
Approximately 700 feet south of State Route 20 bridge over Linton Spring Branch	*10
Lake Powell:	
Approximately 800 feet north of intersection of Orange Street and Pinewood Lane	*8
Approximately 200 feet east of interseciton of Pinewood Lane and Lakeshore Drive	*9
Alaqua Creek:	
Approximately 2,300 feet southeast of intersection of State Route 20 and Whitfield Road	*9
Maps available for inspection at the Walton County Courthouse Annex, 47 North 6th Street, DeFuniak Springs, Florida.	
KENTUCKY	
Inez (City), Martin County (FEMA Docket No. 7283)	
Rockcastle Creek:	
At the downstream corporate limits	*631
Approximately 340 feet upstream of State Route 40	*633
Maps available for inspection at the Inez City Hall, Main Street, Inez, Kentucky.	
Martin County (Unincorporated Areas) (FEMA Docket No. 7283)	
Rockhouse Fork:	
Approximately 170 feet upstream of the confluence with Rockcastle Creek	*610
Immediately downstream of State Route 40	*654
Rockcastle Creek:	
Approximately 5,500 feet downstream of State Route 40	*630
At the upstream corporate limits	*631
Maps available for inspection at the Disaster Emergency Services Director's Office, Route 40, Courthouse Square, Inez, Kentucky.	
MAINE	
Dallas Plantation, Franklin County (FEMA Docket No. 7287)	
Haley Pond:	
For the entire shoreline within the community	*1,528
Maps available for inspection at the Dallas Plantation Office, Dallas Hill Road, Dallas Plantation, Maine.	
Starks (Town), Somerset County (FEMA Docket No. 7287)	
Sandy River:	
Approximately 2,500 feet downstream of Sandy River Dam Road	*194
At upstream corporate limits	*235
Lemon Stream:	
Approximately 1.1 miles downstream of State Route 43	*247
Approximately 100 feet upstream of State Route 43	*270
Maps available for inspection at the Starks Town Office, Lockhill Road, Starks, Maine.	
MARYLAND	
Aberdeen (City), Harford County (FEMA Docket No. 7275)	
Carsins Run:	
Confluence with Swan Creek	*140
Just downstream of Interstate 95	*176
Swan Creek:	
A point approximately 1.06 miles downstream of North Post Road	*13
A point approximately 160 feet downstream of centerline of Interstate 95	*173
Tributary 4 to Swan Creek:	
Approximately 2,625 feet downstream of Aberdeen Thruway	*60
A point approximately 500 feet upstream of Paradise Road	*121
Tributary 3 to Swan Creek:	
Approximately 180 feet downstream of Old Robin Hood Road	*156
Just downstream of Old Robin Hood Road	*162
Maps available for inspection at the City of Aberdeen Planning Department, 3 West Bel Air Avenue, Aberdeen, Maryland.	
Bel Air (Town), Harford County (FEMA Docket No. 7275)	
Plumtree Run:	
At corporate limits, approximately 2,575 feet downstream of Route 24	*289
Approximately 240 feet upstream of Thomas Street	*352
Bynum Run:	
Approximately 750 feet upstream of Brierhill Drive	*258
Approximately 1,630 feet upstream of North Hickory Avenue	*339
Maps available for inspection at the Town of Bel Air Public Works and Planning Department, 705 Churchville Road, Bel Air, Maryland.	
Harford County (Unincorporated Areas) (FEMA Docket No. 7275)	
Bear Cabin Branch:	
Confluence with Winters Run	*259
Approximately 1.4 miles upstream of Bernadette Drive	*397
Bread and Cheese Branch:	
Confluence with Winters Run	*289
At a point approximately 1,200 feet upstream of Ryan Road	*373
Broad Run:	
Confluence with James Run	*214
Approximately 1,320 feet upstream of Edwards Lane	*304
Tributary 1 to Broad Run:	
At confluence with Broad Run	*264
Approximately 640 feet upstream of Asbury Road	*308
Tributary 2 to Broad Run:	
At confluence with Broad Run	*296
Approximately 870 feet upstream of Flint Lock Drive	*358
Bynum Run:	
Approximately 260 feet downstream of Philadelphia Road/State Route 7	*16
Approximately 0.7 mile upstream of Ma and Pa Railroad	*438
Tributary 1 to Bynum Run:	
Confluence with Bynum Run	*270
A point approximately 0.6 mile upstream of confluence with Bynum Run	*292
Tributary 2 to Bynum Run:	
Confluence with Tributary 1 to Bynum Run	*270
At Southampton Road	*294
Carsins Run:	
Just downstream of Interstate 95	*176
A point approximately 930 feet upstream of Carsins Road	*277
East Branch:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Confluence with Winters Run	*341
A point approximately 1,150 feet upstream of confluence with Winters Run ..	*341
Grays Run:	
At CSX Transportation	*10
A point approximately 500 feet upstream of James Run Road	*297
James Run:	
Approximately 500 feet upstream of confluence with Bynum Run	*13
A point approximately 940 feet upstream of Snake Lane	*265
Tributary 1 to James Run:	
Confluence with James Run	*61
A point approximately 1,250 feet upstream of Goat Hill Road	*112
Long Branch:	
A point approximately 320 feet upstream of confluence with Winters Run ..	*294
A point approximately 60 feet upstream of Rock Spring Church Road	*395
Plumtree Run:	
Confluence with Winters Run	*126
A point approximately 160 feet upstream of Thomas Street	*352
Rocky Branch:	
Confluence with Wildcat Branch	*296
Approximately at Harford Road/State Road 147	*371
Swan Creek:	
A point approximately 1.68 miles downstream of North Post Road	*11
A point approximately 1,200 feet upstream of Aldino Road	*342
Tributary 1 to Swan Creek:	
A point approximately 2,050 feet downstream of Oakington Road	*11
A point approximately 1,090 feet upstream of CSX Transportation Railroad	*84
Tributary 2 to Swan Creek:	
Confluence with Swan Creek	*63
A point approximately 1,010 feet upstream of Titan Terrace	*131
Tributary 3 to Swan Creek:	
Just upstream of Old Robin Hood Road	*162
A point approximately 620 feet upstream of Gravel Hill Road	*354
Tributary 4 to Swan Creek:	
Confluence with Swan Creek	*35
A point approximately 800 feet upstream of CONRAIL	*62
West Branch:	
Confluence with Winters Run	*341
A point approximately 1,360 feet upstream of confluence with Winters Run ..	*341
Wildcat Branch:	
A point approximately 350 feet upstream from the confluence with Little	*199
Gunpowder River	
Approximately at Bel Air Road	*417
Tributary to Wildcat Branch:	
Confluence with Wildcat Branch	*354
Upstream side of Bel Air Road	None
Winters Run:	
Approximately 50 feet downstream of U.S. Route 40 ...	*16
Confluence of East Branch and West Branch	*341
Tributary 1 to Winters Run:	
Confluence with Winters Run	*36
A point approximately 1.0 mile upstream from the confluence of Winters Run	*64
Tributary 2 to Winters Run:	
Confluence with Winters Run	*24
At Paul Martin Drive	*40
Tributary 3 to Winters Run:	
A point approximately 1.4 miles upstream from the confluence with Winters Run	*88
A point approximately 360 feet upstream of State Route 24	*269
Tributary 4 to Winters Run:	
Confluence with Winters Run	*124
A point approximately 0.7 mile upstream from the confluence with Winters Run	*201
Tributary 5 to Winters Run:	
Confluence with Winters Run	*59
A point approximately 720 feet upstream of State Route 24	*202
Tributary 6 to Winters Run:	
Confluence with Winters Run	*51
Approximately 205 feet upstream of Porter Drive	*163
Wysong Branch:	
Confluence with Bynum Run	*323
Approximately 950 feet upstream of Henderson Road	*340
Lilly Run:	
Just upstream of Revolution Street	*42
Just upstream of CSX Transportation culvert	*75
Maps available for inspection at the Harford County Planning and Zoning Department, 220 South Main Street—2nd Floor, Bel Air, Maryland.	
Havre de Grace (City), Harford County (FEMA Docket No. 7275)	
Chesapeake Bay:	
Corporate limit	*14
A point approximately 500 feet southwest of the intersection of Seneca Avenue and Chesapeake Drive	*13
Lilly Run:	
Downstream of Locust Road	*12
Approximately 200 feet upstream of CSX Transportation culvert	*75
Maps available for inspection at the City of Havre de Grace Planning Department, 711 Pennington Avenue, Havre de Grace, Maryland 21078.	
MASSACHUSETTS	
Millbury (Town), Worchester County (FEMA Docket No. 7279)	
Ramshorn Brook:	
Approximately 1,300 feet downstream of Dolan Road and Dam	*610
Approximately 0.5 mile upstream of Dolan Road and Dam (upstream corporate limits)	*633
Dorothy Pond:	
Upstream side of Riverlin Street	*393
Approximately 700 feet upstream of Wheelock Avenue	*399
Maps available for inspection at the Town Hall, Planner's Office, 127 Elm Street, Millbury, Massachusetts.	
MISSISSIPPI	
Brookhaven (City), Lincoln County (FEMA Docket No. 7279)	
Stream 4 (Halbert Branch):	
Approximately 520 feet downstream of Natchez Avenue	*430
Approximately 250 feet upstream of East Meadowbrook Drive	*468
Maps available for inspection at the Building Inspector's Office, 301 South First Street, Brookhaven, Mississippi.	
Lincoln County (Unincorporated Areas) (FEMA Docket No. 7279)	
Halbert Branch:	
Approximately 50 feet upstream of U.S. Highway 51	*413
Approximately 1.35 miles upstream of U.S. Highway 84	*429
Maps available for inspection at the Lincoln County Records Room, 301 South First Street, Brookhaven, Mississippi.	
NEW YORK	
Ellicottville (Town), Cattaraugus County (FEMA Docket No. 7267)	
Great Valley Creek:	
At private drive	*1,543
Approximately 70 feet upstream of Chessie System	*1,554
Maps available for inspection at the Ellicottville Town Hall, 1 West Washington Street, Ellicottville, New York.	
NORTH CAROLINA	
Burgaw (Town), Pender County (FEMA Docket No. 7275)	
Burgaw Creek:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At downstream side of CSX Transportation	*36
Approximately 1,650 feet upstream of Wilmington Street	*52
Osgood Canal:	
Approximately 800 feet upstream of confluence with Burgaw Creek	*35
Approximately 50 feet upstream of CSX Transportation	*51
Maps available for inspection at the Town Hall, 109 North Walker Street, Burgaw, North Carolina.	
Cornelius (Town), Mecklenburg County (FEMA Docket No. 7275)	
Lake Norman:	
Entire shoreline within community	*761
Maps available for inspection at the Cornelius Town Hall, 21410 Catawba Avenue, Cornelius, North Carolina.	
Davidson (Town), Mecklenburg County (FEMA Docket No. 7275)	
Lake Norman:	
Entire shoreline within community	*761
Maps available for inspection at the Davidson Town Hall—Planner's Department, 216 South Main Street, Davidson, North Carolina.	
PENNSYLVANIA	
Clarks Summit (Borough), Lackawanna County (FEMA Docket No. 7279)	
Tributary A:	
Approximately 355 feet downstream of U.S. Routes 6 and 11	*1,147
Approximately 30 feet downstream of corporate limits	*1,261
Tributary A1:	
At confluence with Tributary A	*1,155
Just downstream of South Abington Road	*1,262
Tributary B:	
Just downstream of Terrace Drive	*1,227
Approximately 60 feet upstream of upstream corporate limits	*1,326
Maps available for inspection at the Clarks Summit Borough Hall, 304 South State Street, Clarks Summit, Pennsylvania.	
Kutztown (Borough), Berks County (FEMA Docket No. 7275)	
Sacony Creek:	
Approximately 1,800 feet downstream of U.S. Route 222	*399
Approximately 1,800 feet upstream of Normal Avenue	*407
Maps available for inspection at the Kutztown Code Office, Municipal Building, 45 Railroad Street, Kutztown, Pennsylvania.	
Maxatawny (Township), Berks County (FEMA Docket No. 7275)	
Sacony Creek:	
Approximately 1,100 feet downstream of Deturks Bridge	*390
Approximately 800 feet upstream of Fleetwood Road	*467
Maps available for inspection at the Township Building, 663 Noble Street, Kutztown, Pennsylvania.	
SOUTH CAROLINA	
Cayce (City), Lexington County (FEMA Docket No. 7271)	
Congaree Creek:	
Approximately 700 feet upstream of I–26	*143
Approximately 2,040 feet upstream of I–26	*143
Maps available for inspection at the Cayce City Hall, 1800 12th Street Extension, Cayce, South Carolina.	
Columbia (City), Lexington County (FEMA Docket No. 7271)	
Kinley Creek:	
At downstream corporate limits approximately 50 feet upstream of Harbison Boulevard	*228
At upstream corporate limits approximately 1,100 feet downstream of Beaver Dam Road	*228
Maps available for inspection at the City of Columbia Department of Utilities & Engineering, 1225 Laurel Street, Columbia, South Carolina.	
Lexington (Town), Lexington County (FEMA Docket No. 7271)	
Fourteen Mile Creek:	
Approximately 1,150 feet downstream of Park Road	*352
Approximately 1,150 feet upstream of Park Road	*363
Twelve Mile Creek:	
Approximately 0.64 mile downstream of the confluence of Tributary TM–1	*243
Approximately 0.42 mile downstream of Wildlife Road	*318
Maps available for inspection at the Lexington Town Hall, 11 Maiden Lane, Lexington, South Carolina.	
Lexington County (Unincorporated Areas) (FEMA Docket No. 7271)	
First Creek:	
Approximately 550 feet downstream of Dogwood Road	*168
Approximately 300 feet upstream of Goodwin Pond Road	*306
Kinley Creek:	
Approximately 25 feet downstream of Piney Grove Road	*201
Approximately 150 feet downstream of Beaver Dam Road	*231
Congaree Creek:	
Approximately 700 feet upstream of I–26	*143
At upstream side of Platt Springs Road	*288
Fourteen Mile Creek:	
Approximately 1,700 feet upstream of Old Chapin Road	*349
Approximately 50 feet upstream of Wise Ferry Road	*458
Lick Fork Branch:	
At confluence with Red Bank Creek	*185
At downstream side of Kitti Wake Drive Dam	*260
Red Bank Creek:	
Approximately 50 feet upstream at confluence with Congaree Creek	*164
At upstream side of Calk's Ferry Road	*380
Savana Branch:	
At confluence with Congaree Creek	*144
Approximately 100 feet upstream of St. David's Church Road	*288
Second Creek:	
At confluence with First Creek	*179
At confluence of Bear Creek	*222
Bear Creek:	
At confluence with Second Branch	*222
At confluence of Hunt Branch	*274
Hunt Branch:	
At confluence with Bear Creek	*274
Approximately 350 feet upstream of Darden Pond Dam	*330
Lake Murray:	
Entire shoreline within county	*363
Twelve Mile Creek:	
Approximately 0.83 mile upstream of Corley Mill Road	*193
Approximately 0.47 mile upstream of Taylor Mill Pond Dam	*441
Tributary to Fourteen Mile Creek:	
Approximately 550 feet upstream of confluence with Fourteen Mile Creek	*265
Approximately 1,880 feet upstream of confluence with Fourteen Mile Creek	*277

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Lexington County Planning Department, 212 South Lake Drive, 5th Floor, Administration Building, Lexington, South Carolina.	
Pine Ridge (Town), Lexington County (FEMA Docket No. 7271)	
Congaree Creek:	
Approximately 1,750 feet downstream of confluence with Savana Bridge	*143
Approximately 600 feet downstream of Southern Railway bridge	*148
First Creek:	
Approximately 1,125 feet downstream of Dogwood Road	*168
Approximately 320 feet upstream of Dogwood Road	*173
Savana Branch:	
At confluence with Congaree Creek	*144
Approximately 650 feet downstream of Old Dunbar Road	*147
Maps available for inspection at the Pine Ridge Town Hall, 1200 Fish Hatchery Road, West Columbia, South Carolina.	
South Congaree (Town), Lexington County (FEMA Docket No. 7271)	
Congaree Creek:	
Approximately 1,775 feet upstream of Southern Railway	*151
Approximately 1,150 feet upstream of the confluence of Red Bank Creek	*165
First Creek:	
At confluence with Congaree Creek	*152
Approximately 400 feet downstream of Dogwood Road	*170
Red Bank Creek:	
At confluence with Congaree Creek	*164
Maps available for inspection at the South Congaree Town Hall, 119 West Berry Road, West Columbia, South Carolina.	
TENNESSEE	
Decatur County (Unincorporated Areas) (FEMA Docket No. 7279)	
Tennessee River:	
Upstream county boundary	*374
At confluence of Rockets Creek	*376
At confluence of Cub Creek	*377
At confluence of Lick Creek	*377
At confluence of Beech River	*380
At confluence of Whites Creek	*383
At confluence of Turnbo Creek	*391
At confluence of Stewman Creek	*391
At confluence of Doe Creek	*392
Downstream county boundary	*393
Maps available for inspection at the Decatur County Courthouse, County Executive Office, 22 Main Street, Decaturville, Tennessee.	
VIRGINIA	
Halifax (Town), Halifax County (FEMA Docket No. 7283)	
Banister Lake:	
Approximately 120 feet downstream of downstream corporate limit	*365
At the upstream corporate limit	*365
Maps available for inspection at the Halifax Town Hall, 70 Main Street, Halifax, Virginia.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: September 27, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–25802 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–115; FCC 99–227]

Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document establishes rules to implement section 222(e) by requiring all telecommunications carriers to provide subscriber list information gathered in their capacity as providers of telephone exchange service to any person upon request for the purpose of publishing directories in any format, including Internet directories. The intended effect is to further Congress's goals of preventing unfair local exchange carrier (LEC) practices and encouraging the development of competition in directory publishing.

DATES: Effective December 14, 1999. Written comments by the public on the information collection requirements are due November 4, 1999. OMB must submit written comments on the information collection requirements on or before December 6, 1999.

FOR FURTHER INFORMATION CONTACT: William A. Kehoe, Special Counsel, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580 or via the Internet at bkehoe@fcc.gov. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484. For additional information concerning the information collections contained in this Order contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted August 23, 1999, and released September 9, 1999. The full text of this Third Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Room CY–A257, Washington, DC The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc99227.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., NW, Washington, DC 20036. This Order contains information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. The general public and other federal agencies are invited to comment on the information collections contained in this proceeding.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, the Order contains a Final Regulatory Flexibility Analysis which is set forth in an Appendix to the Order. A brief description of the analysis follows. Pursuant to section 604 of the Regulatory Flexibility Act, the Commission performed a comprehensive analysis of the Order with regard to small entities. This analysis includes: (1) A succinct statement of the need for, and objectives of, the Commission's decisions in the Order; (2) A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the Commission's assessment of these issues, and a statement of any changes made in the Order as a result of the comments; (3) A description of and an estimate of the number of small entities to which the Order will apply; (4) A description of the projected reporting, recordkeeping and other compliance

requirements of the Order, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for compliance with the requirement; (5) A description of the steps the Commission has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the Order and why each one of the other significant alternatives to each of the Commission's decisions which affect small entities was rejected.

Paperwork Reduction Act

This Order contains new and modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–12. Persons wishing to comment on the information collections should submit comments on or before November 4, 1999. Comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) The accuracy of the Commission's burden estimates; (c) Ways to enhance the quality, utility, and clarity of the information collected; and (d) Ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0715.

Title: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information.

Form No.: N/A.

Type of Review: Revised collection.

Information collection	No. of respondents (approx.)	Estimated time per response	Total annual burden
Provision of Subscriber List Information	2,000	2 hours (10 responses per year)	20,000
Notifications	1,000	.5	500
Cost Study	100	100	10,000
Certification	2,000	.5	1,000
Disclosure of Contract Rates, Terms, and Conditions	2,000	.5 hours (2 responses per year)	2,000

Total Annual Burden: 33,500 hours

Respondents: Businesses or other for-profit.

Estimated costs per respondent: $0.

Needs and Uses: The Commission, in compliance with section 222(e) of the Communications Act, promulgates rules in this Order to further Congress' goals of preventing unfair LEC practices in relation to subscriber list information and of encouraging the development of competition in directory publishing. Our clarification and particularization of the obligations imposed on carriers by section 222(e) is necessary to achieve Congress' goals in relation to subscriber list information. This approach should reduce confusion and potential controversy with minimal burdens on carriers and directory publishers, many of whom are small businesses.

Synopsis of Order

1. In this *Third Report and Order,* we require all telecommunications carriers to provide subscriber list information gathered in their capacity as providers of telephone exchange service to any person upon request for the purpose of publishing directories in any format, including Internet directories. We also define subscriber list information as ''the listed names of subscribers of a carrier and such subscribers'' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service) or any combination of such listed names, numbers, addresses, or classifications * * * that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.''

2. Not only LECs, but all telecommunications carriers, including interexchange carriers, cable operators, and other competitive LECs, must provide subscriber list information gathered in their capacity as providers of telephone exchange service to any person upon request for the purpose of publishing directories. Only the carrier that provides a subscriber with telephone exchange service is obligated to provide a particular telephone subscriber's subscriber list information. A carrier need not provide subscriber list information to requesting directory publishers pursuant to section 222(e) unless the carrier gathered that information in its capacity as a provider of telephone exchange service.

3. The definition of subscriber list information we adopt includes primary advertising classifications only if they are ''assigned at the time of the establishment'' of telephone exchange service. A primary advertising classification is assigned at the time of the establishment of telephone exchange service if the carrier that provides telephone exchange service assigns the classification or if a tariff or State requirement obligates the carrier to provide yellow pages listings as part of telephone exchange service to businesses.

4. Carriers are obligated to provide updated subscriber list information to requesting directory publishers. For subscribers that have multiple telephone numbers, a carrier must provide requesting directory publishers with each telephone number that it has published, caused to be published, or accepted for publication in a directory.

5. Each carrier that gathers subscriber list information in its capacity as a provider of telephone exchange service is obligated to provide that information to requesting directory publishers at the same rates, terms, and conditions that the carrier provides the information to its own directory publishing operation, its directory publishing affiliate, or other directory publishers.

6. We also require each carrier that is subject to section 222(e) to make available to requesting directory publishers any written contracts that it has executed for the provision of subscriber list information for directory publishing purposes to itself, an affiliate, or an entity that publishes directories on the carrier's behalf. In addition, to the extent any of a carrier's rates, terms, and conditions for providing subscriber list information for those operations are not set forth in a written contract, the carrier must keep a written record of, and make available to requesting directory publishers, those rates, terms, and conditions. Upon request, the carrier shall also provide these contracts and this information to this Commission. A carrier must not restrict a directory publisher's choice of directory format.

7. A carrier must provide subscriber list information at the time requested by the directory publisher, provided that the directory publisher has given at least thirty days advance notice and the carrier's internal systems permit the request to be filled within that time frame. We require carriers to unbundle subscriber list information, including updates, on any basis requested by a directory publisher that the carrier's internal systems can accommodate. A carrier, in addition, must not require directory publishers to purchase any product or service other than subscriber list information as a condition of obtaining subscriber list information. In unbundling subscriber list information for directory publishers, however, the carrier shall not disclose customer proprietary network information except as permitted by sections 222(c) and (d) of the Communications Act and our implementing rules. Upon request, a carrier that has received at least thirty days advance notice also must provide subscriber list information on any periodic basis that the carrier's internal systems can accommodate.

8. If the carrier's systems cannot accommodate the delivery schedule, the level of unbundling, or the format requested by a directory publisher, the carrier must inform the directory publisher of that fact, tell the publisher which delivery schedules, unbundling levels, or formats can be accommodated, and adhere to the schedule, unbundling level, or format the publisher chooses from among those available. The carrier must provide this information within thirty days of when it receives the publisher's request. If this process results in the provision of listings in addition to those the directory publisher requested, the carrier may impose charges for, and the directory publisher may publish, only the requested listings. A carrier, in addition, must not require directory publishers to purchase any product or service other than subscriber list information as a condition of obtaining subscriber list information.

9. If a carrier finds that it cannot accommodate all of a group of multiple or conflicting requests for subscriber list information within the specified time frames, the carrier shall respond to those requests on a nondiscriminatory basis. The carrier shall inform each affected directory publisher of the conflicting requests within thirty days of when it receives the publisher's request. Within that thirty-day period, the carrier also shall inform each affected directory publisher how it intends to resolve the conflict and the schedule on which it intends to provide subscriber list information to each publisher.

10. In future disputes regarding the sufficiency of a carrier's internal subscriber list information systems, the burden will be on the carrier to show that those systems cannot accommodate the delivery schedule, unbundling level, and format the directory publisher requests.

11. We require carriers to provide requesting directory publishers with notice of changes in subscriber list information to the extent those changes reflect customers' decisions to cease having particular telephone numbers listed.

12. Based on the record before us, we conclude that $0.04 per listing is a presumptively reasonable rate for base file subscriber list information, as defined below, and that $0.06 per listing is a presumptively reasonable rate for other subscriber list information, including updates, that carriers provide directory publishers. We do not preclude a carrier from charging subscriber list information rates different from these presumptively reasonable rates. However, any carrier whose rates exceed either of these rates should be prepared to provide cost data and all other relevant information justifying the higher rate in the event a directory publisher files a complaint regarding that rate pursuant to section 208 of the Communications Act. Absent credible and verifiable data showing that the carrier's costs, including a reasonable profit, exceed the applicable presumptively reasonable rate, the Bureau or the Commission, depending on the circumstances, shall conclude that the rate is unreasonable and award damages accordingly.

13. In the event a directory publisher files a complaint regarding a carrier's subscriber list information rates, the carrier must present a cost study providing credible and verifiable cost data to justify each challenged rate. This cost study must clearly and specifically identify and justify:

a. *Incremental Costs.* Each specific function the carrier performs solely to provide subscriber list information to the complainant; and the incremental costs the carrier incurs in performing each of these specific functions.

b. Common Costs. The cost the carrier incurs in creating and maintaining its subscriber list information database and the methods the carrier uses to allocate that cost among supported services.

c. Overheads. Any other costs the carrier incurs to support its provision of subscriber list information to the complainant; the other activities those costs support; and the methods the carrier uses to allocate those costs.

d. Other Information. The projected average number of listings the carrier provides to directory publishers and, if applicable, to other entities in a year; the rate of return on investment and depreciation costs the carrier uses in calculating its subscriber list information rates; and any other information necessary to make clear the carrier's costing process. The carrier should provide this information separately for both base file and updated subscriber list information if the complainant challenges both types of rates. We also expect the carrier to describe how its methods for allocating common costs compare to those the carrier uses in other contexts. In the absence of cost data showing that the carrier's costs exceed the presumptively reasonable rates, the Bureau or the Commission, depending on the circumstances, shall find in favor of the plaintiff, and award damages accordingly.

14. We require that directory publishers be allowed to purchase updated subscriber list information rather than having to repurchase a carrier's entire subscriber list information database each time the publisher wishes to update its own database.

15. Carriers may require directory publishers to certify that they will use subscriber list information obtained pursuant to section 222(e) only for directory publishing purposes. The certification may be either oral or written, at the carrier's option.

16. After consideration of possible alternatives, we conclude in the *Third Report and Order* that our clarification and particularization of the obligations imposed on carriers by section 222(e) is necessary to achieve Congress' goals in relation to subscriber list information. Our decision to act in this *Third Report and Order*, rather than exclusively through case-by-case adjudication, will reduce confusion and potential controversy with minimal burdens on carriers and directory publishers, many of whom are small entities.

17. As indicated above, our actions in this *Third Report and Order* will affect both carriers and directory publishers that, for purposes of the FRFA, we assume are classified as small entities. The record in this proceeding reflects the carriers' and directory publishers' conflicting views as to the meaning of the statutory language and, in particular, as to the application of statutory terms, such as ''timely'' and ''reasonable,'' to specific situations. The record also makes clear that these disputes may

have prevented full realization of Congress' goals of preventing unfair carrier practices in relation to subscriber list information and encouraging the development of competition in directory publishing.

18. In resolving these disputes, we have considered significant alternatives, such as allowing value-based rates for subscriber list information carriers provide directory publishers. In choosing among the various alternatives, we have sought to minimize the adverse economic impact on carriers, including those that are small entities. We recognize, however, that Congress intended section 222(e) to prevent carriers from deriving economic benefits from refusing to provide subscriber list information on a timely and unbundled basis, charging discriminatory or unreasonable rates for that information, or imposing discriminatory or unreasonable terms or conditions in connection with the provision of that information. In implementing that section, we have sought to eliminate those benefits.

19. As discussed in this *Third Report and Order,* we recognize that the ability of independent directory publishers to improve customer service and to develop new products is dependent on telecommunications carriers' understanding and complying with their obligations under section 222(e). Many independent directory publishers are small, entrepreneurial businesses. Our actions in this *Third Report and Order* will benefit these directory publishers by facilitating their directory publishing operations. Those actions also will eliminate barriers to entering the directory publishing market, and thus benefit small entities as they take that step. In general in this *Third Report and Order,* we have attempted to implement section 222(e) in a manner that keeps burdens on carriers to a minimum while ensuring that directory publishers, including new entrants, are able to compete based on the quality of their directories. We believe that this *Third Report and Order* furthers our commitment to minimizing regulatory burdens on small entities in accordance with statutory requirements.

20. Accordingly, it is ordered that, pursuant to the authority contained in §§ 1, 4(i), 4(j), 201–205, 208, 222(e), 222(f)(3), 251, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 208, 222(e), 222(f)(3), 303(r), and 403, the Third Report and Order is adopted.

21. It is further ordered that, pursuant to the authority contained in §§ 1, 4(i), 4(j), 201–205, 208, 222(e), 222(f)(3), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 208, 222(e), 222(f)(3), 303(r), and 403, Part 64 of the Commission's rules, 47 CFR Part 64, is amended, as set forth below.

22. It is further ordered that, pursuant to the authority contained in § § 1, 4(i), 4(j), 201–205, 208, 222(e), 222(f)(3), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 208, 222(e), 222(f)(3), 303(r), and 403, and section 1.427 of the Commission's Rules, 47 CFR 1.427, that the requirements and rules adopted in the Third Report and Order shall be effective December 14, 1999, since the rules contain information collection requirements that are contingent on approval by the OMB.

23. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Third Report and Order, including the associated Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 605(b) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 1–5, 7, 201–05, 222.

2. Part 64 is amended by adding Subpart X to read as follows:

Subpart X—Subscriber List Information

64.2301 Basis and purpose.
64.2305 Definitions.
64.2309 Provision of subscriber list information.
64.2313 Timely basis.
64.2317 Unbundled basis.
64.2321 Nondiscriminatory rates, terms, and conditions.
64.2325 Reasonable rates, terms, and conditions.
64.2329 Format.
64.2333 Burden of proof.
64.2337 Directory publishing purposes.
64.2341 Record keeping.
64.2345 Primary advertising classification.

Subpart X—Subscriber List Information

§ 64.2301 Basis and purpose.

(a) *Basis.* These rules are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of these rules is to implement section 222(e) of the Communications Act of 1934, as amended, 47 U.S.C. 222. Section 222(e) requires that ''a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.''

§ 64.2305 Definitions.

Terms used in this subpart have the following meanings:

(a) *Base file subscriber list information.* A directory publisher requests base file subscriber list information when the publisher requests, as of a given date, all of a carrier's subscriber list information that the publisher wishes to include in one or more directories.

(b) *Business subscriber.* Business subscriber refers to a subscriber to telephone exchange service for businesses.

(c) *Primary advertising classification.* A primary advertising classification is the principal business heading under which a subscriber to telephone exchange service for businesses chooses to be listed in the yellow pages, if the carrier either assigns that heading or is obligated to provide yellow pages listings as part of telephone exchange service to businesses. In other circumstances, a primary advertising classification is the classification of a subscriber to telephone exchange service as a business subscriber.

(d) *Residential subscriber.* Residential subscriber refers to a subscriber to telephone exchange service that is not a business subscriber.

(e) *Subscriber list information.* Subscriber list information is any information:

(1) Identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and

(2) That the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

(f) *Telecommunications carrier.* A telecommunications carrier is any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in 47 U.S.C. 226(a)(2)).

(g) *Telephone exchange service.* Telephone exchange service means:

(1) Service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or

(B) Comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

(h) *Updated subscriber list information.* A directory publisher requests updated subscriber list information when the publisher requests changes to all or any part of a carrier's subscriber list information occurring between specified dates.

§ 64.2309 Provision of subscriber list information.

(a) A telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

(b) The obligation under paragraph (a) to provide a particular telephone subscriber's subscriber list information extends only to the carrier that provides that subscriber with telephone exchange service.

§ 64.2313 Timely basis.

(a) For purposes of § 64.2309, a telecommunications carrier provides subscriber list information on a timely basis only if the carrier provides the requested information to the requesting directory publisher either:

(1) At the time at which, or according to the schedule under which, the directory publisher requests that the subscriber list information be provided;

(2) When the carrier does not receive at least thirty days advance notice of the time the directory publisher requests that subscriber list information be provided, on the first business day that is at least thirty days from date the carrier receives that request; or

(3) At a time determined in accordance with paragraph (b) of this section.

(b) If a carrier's internal systems do not permit the carrier to provide subscriber list information within either of the time frames specified in paragraph (a)(1) of this section, the carrier shall:

(1) Within thirty days of receiving the publisher's request, inform the directory publisher that the requested schedule cannot be accommodated and tell the directory publisher which schedules can be accommodated; and

(2) Adhere to the schedule the directory publisher chooses from among the available schedules.

§ 64.2317 Unbundled basis.

(a) A directory publisher may request that a carrier unbundle subscriber list information on any basis for the purpose of publishing one or more directories.

(b) For purposes of § 64.2309, a telecommunications carrier provides subscriber list information on an unbundled basis only if the carrier provides:

(1) The listings the directory publisher requests and no other listings, products, or services; or

(2) Subscriber list information on a basis determined in accordance with paragraph (c) of this section.

(c) If the carrier's internal systems do not permit it unbundle subscriber list information on the basis a directory publisher requests, the carrier must:

(1) Within thirty days of receiving the publisher's request, inform the directory publisher that it cannot unbundle subscriber list information on the requested basis and tell the directory publisher the bases on which the carrier can unbundle subscriber list information; and

(2) In accordance with paragraph (d) of this section, provide subscriber list information to the directory publisher unbundled on the basis the directory publisher chooses from among the available bases.

(d) If a carrier provides a directory publisher listings in addition to those the directory publisher requests, the carrier may impose charges for, and the directory publisher may publish, only the requested listings.

(e) A carrier must not require directory publishers to purchase any product or service other than subscriber list information as a condition of obtaining subscriber list information.

§ 64.2321 Nondiscriminatory rates, terms, and conditions.

For purposes of § 64.2309, a telecommunications carrier provides subscriber list information under nondiscriminatory rates, terms, and conditions only if the carrier provides subscriber list information gathered in its capacity as a provider of telephone exchange service to a requesting directory publisher at the same rates, terms, and conditions that the carrier provides the information to its own directory publishing operation, its directory publishing affiliate, or other directory publishers.

§ 64.2325 Reasonable rates, terms, and conditions.

(a) For purposes of § 64.2309, a telecommunications carrier will be presumed to provide subscriber list information under reasonable rates if its rates are no more than $0.04 a listing for base file subscriber list information and no more than $0.06 a listing for updated subscriber list information.

(b) For purposes of § 64.2309, a telecommunications carrier provides subscriber list information under reasonable terms and conditions only if the carrier does not restrict a directory publisher's choice of directory format.

§ 64.2329 Format.

(a) A carrier shall provide subscriber list information obtained in its capacity as a provider of telephone exchange service to a requesting directory publisher in the format the publisher specifies, if the carrier's internal systems can accommodate that format.

(b) If a carrier's internal systems do not permit the carrier to provide subscriber list information in the format the directory publisher specifies, the carrier shall:

(1) Within thirty days of receiving the publisher's request, inform the directory publisher that the requested format cannot be accommodated and tell the directory publisher which formats can be accommodated; and

(2) Provide the requested subscriber list information in the format the directory publisher chooses from among the available formats.

§ 64.2333 Burden of proof.

(a) In any future proceeding arising under section 222(e) of the Communications Act or § 64.2309, the burden of proof will be on the carrier to the extent it claims its internal subscriber list information systems cannot accommodate the delivery time, delivery schedule, unbundling level, or format requested by a directory publisher.

(b) In any future proceeding arising under section 222(e) of the Communications Act or § 64.2309, the burden of proof will be on the carrier to the extent it seeks a rate exceeding $0.04 per listing for base file subscriber list information or $0.06 per listing for updated subscriber list information.

§ 64.2337 Directory publishing purposes.

(a) Except to the extent the carrier and directory publisher otherwise agree, a directory publisher shall use subscriber list information obtained pursuant to section 222(e) of the Communications Act or § 64.2309 only for the purpose of publishing directories.

(b) A directory publisher uses subscriber list information ''for the purpose of publishing directories'' if the publisher includes that information in a directory, or uses that information to determine what information should be included in a directory, solicit advertisers for a directory, or deliver directories.

(c) A telecommunications carrier may require any person requesting subscriber list information pursuant to section 222(e) of the Communications Act or § 64.2309 to certify that the publisher will use the information only for purposes of publishing a directory.

(d) A carrier must provide subscriber list information to a requesting directory publisher even if the carrier believes that the directory publisher will use that information for purposes other than or in addition to directory publishing.

§ 64.2341 Record keeping.

(a) A telecommunications carrier must retain, for at least one year after its expiration, each written contract that it has executed for the provision of subscriber list information for directory publishing purposes to itself, an affiliate, or an entity that publishes directories on the carrier's behalf.

(b) A telecommunications carrier must maintain, for at least one year after the carrier provides subscriber list information for directory publishing purposes to itself, an affiliate, or an entity that publishes directories on the carrier's behalf, records of any of its rates, terms, and conditions for providing that subscriber list information which are not set forth in a written contract.

(c) A carrier shall make the contracts and records described in paragraphs (a) and (b) of this section available, upon request, to the Commission and to any directory publisher that requests those contracts and records for the purpose of publishing a directory.

§ 64.2345 Primary advertising classification.

A primary advertising classification is assigned at the time of the establishment of telephone exchange service if the carrier that provides telephone exchange service assigns the classification or if a tariff or State requirement obligates the carrier to provide yellow pages listings as part of telephone exchange service to businesses.

[FR Doc. 99–25648 Filed 10–4–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 092299D]

Atlantic Highly Migratory Species (HMS) Fisheries; Large Coastal Shark Fishery; Season Adjustments

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

ACTION: Postponement of closure; fishing season notification.

SUMMARY: NMFS has determined that the large coastal shark (LCS) commercial fishery quota for the second semiannual fishing season has not been reached. Therefore, NMFS notifies eligible participants that the commercial fishery for LCS in the Western North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, which was scheduled to close September 30, 1999, at 11:30 p.m. local time, has been extended to October 15, 1999, at 11:30 p.m. local time. Both the ridgeback and non-ridgeback sectors of the LCS fishery will remain open until the issued closure date. This action is necessary to ensure adequate opportunity for eligible fishery participants to harvest the available quota and to ensure that the adjusted semiannual quota for LCS for the period July 1 through December 31, 1999, is not exceeded.

DATES: The commercial fishery for LCS will close on October 15, 1999, at 11:30 p.m. local time and will remain closed through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Margo Schulze or Steve Meyers, 301-713-2347; fax 301-713-1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

On June 30, 1999, the NMFS received a Court Order from Judge Steven D. Merryday relative to the May, 1997, lawsuit challenging commercial harvest quotas for Atlantic sharks. Specifically, the court forbid NMFS from enforcing the 1999 regulations, 64 FR 29090 (May, 28, 1999) on Atlantic shark commercial catch quotas and fish-counting methods (including the counting of dead discards and state commercial landings after federal closures) that are different from the quotas and fish counting methods prescribed by the 1997 Atlantic shark regulations, 62 FR 16648 (April 7, 1997). Therefore, the LCS quota reverted to its 1997 level of 1,285 metric tons dressed weight (all species of LCS included), with no minimum size on ridgeback LCS, the pelagic and small coastal shark quotas also revert to their 1997 levels, the 1997 prohibited species list now applies in commercial fisheries only (five prohibited species: white, basking, whale, sand tiger and bigeye sand tiger). The limited access provisions do still apply, however, including trip limits for directed and incidental shark permit holders.

The annual commercial quota of LCS to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters is apportioned between two equal semiannual fishing seasons. The second semiannual quota for LCS of 642 metric tons dressed weight (mt dw) was reduced by the overharvest of 57 mt dw in the first semiannual fishing season such that 585 mt dw were available for harvest for the semiannual period beginning July 1, 1999. The second semiannual fishing season was opened July 1, 1999 and closed on July 28, 1999 (64 FR 37883, July 14, 1999), with 306.5 mt dw of the LCS quota remaining unharvested. On September 1, 1999, the fishing season was again opened through September 30, 1999 (64 FR 47713, September 1, 1999) to allow fishing participants to harvest the remaining quota.

Dealer reports and state landings summaries for the period July 1 through September 15, 1999, indicate that approximately 375 mt dw of the available second semiannual LCS subquota of 585 mt dw have been harvested. Given a catch rate of approximately 62.5 mt dw per week, NMFS believes that the available quota of 210 mt dw should be attained by October 15, 1999. Extending the season for 2 more weeks should allow adequate

opportunity for fishermen to harvest the available quota but will ensure that the quota is not exceeded. Therefore, the LCS commercial fishery will be extended to October 15, 1999, at 11:30 pm local time, and will afterwards remain closed through December 31, 1999.

During a closure, retention of, fishing for, possessing or selling LCS are prohibited for persons fishing aboard vessels issued a limited access permit under 50 CFR 635.4. After October 15, 1999, the sale, purchase, trade, or barter of carcasses and/or fins of LCS harvested by a person aboard a vessel that has been issued a permit under 50 CFR 635.4 are prohibited, except that possession is authorized for LCS that were harvested, offloaded, and sold prior to the closure and that were held in storage by a dealer or processor.

Commercial fishing for pelagic and small coastal sharks may continue until further notice. When quotas are projected to be reached, NMFS will file notice of closure at the Office of the Federal Register.

Those vessels that have not been issued a limited access permit under 50 CFR 635.4 may not sell sharks and are subject to the recreational retention limits and size limits specified at 50 CFR 635.22(c) and 635.20(e). The recreational fishery is not affected by this action.

Classification

This action is taken under 50 CFR part 635 and is exempt from review under E.O. 12866.

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

Dated: September 28, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–25715 Filed 9–29–99; 4:24 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 092999B]

Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker and Rougheye Rockfish in the Eastern Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of shortraker and rougheye rockfish in the Eastern Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of shortraker and rougheye rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the 1999 total allowable catch (TAC) of shortraker and rougheye rockfish in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 1, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780 or tom.pearson@noaa.gov.

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

The 1999 TAC of shortraker and rougheye rockfish in the Eastern Regulatory Area of the GOA was established as 460 metric tons by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the 1999 TAC for shortraker and rougheye rockfish in the Eastern Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of shortraker and rougheye rockfish in the Eastern Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 TAC for shortraker and rougheye rockfish in the Eastern Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has taken the 1999 TAC for shortraker and rougheye rockfish in the Eastern Regulatory Area of the GOA. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: September 29, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–25804 Filed 9–30–99; 4:01 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 192
Tuesday, October 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–194–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that would have required replacement of the rudder trim switch in the flight compartment with a new switch having a longer shaft; modification of wiring in panel 408VU; and replacement of the rudder trim control knob with a new knob, as necessary. This new action revises the proposed rule by requiring replacement of the control knob with an improved new knob. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this new proposed AD are intended to prevent inadvertent and uncommanded rudder trim activation, which could result in yaw and roll excursions and consequent reduced controllability of the airplane.

DATES: Comments must be received by November 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 96–NM–194–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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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 96–NM–194–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. 96–NM–194–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on February 12, 1998 (63 FR 7076). That supplemental NPRM would have required replacement of the rudder trim switch in the flight compartment with a new switch having a longer shaft; modification of wiring in panel 408VU; and replacement of the control knob with a new knob, as necessary. That supplemental NPRM was prompted by reports of in-flight uncommanded rudder trim activation due to inadvertent activation of the rudder trim switch, failure of the switch, or incorrect installation of the switch. That condition, if not corrected, could result in uncommanded yaw/roll excursions and consequent reduced controllability of the airplane.

Comments

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

Request To Include Inspection Requirement

One commenter, the manufacturer, suggests that the proposed AD be revised to include an inspection to ensure appropriate clearance between the rudder trim knob and panel 408VU, following installation of a new rudder trim switch in accordance with Airbus Service Bulletins A310–27–2084 and A300–27–6037, both dated February 12, 1997 (Reference Airbus Modification 11662). The commenter states that in-service retrofits have shown that this modification may not be sufficient to provide the required clearance if all parts involved are at their tolerance limits. This condition may exist even following replacement of the rudder trim knob with a modified knob as described in Airbus Service Bulletins A310–27–2058 and A300–27–6022, and for this reason, an additional inspection for adequate clearance was included in those service bulletins.

The commenter notes that a decision has been made to replace the rudder

trim knob with an improved new knob as described in new Airbus Service Bulletins A310–27–2087 and A300–27–6042 (Reference Airbus Modification 11874) described below. Following accomplishment of this replacement, adequate clearance is expected to be provided for all parts tolerances. The knob replacement is anticipated to be mandated by issuance of a new French airworthiness directive following issuance of the service bulletins. The commenter suggests the supplemental NPRM be revised to include the additional inspection for adequate clearance until all airplanes have been retrofitted with this final solution, which is expected to require up to 15 months.

The FAA does not concur. In light of the information from the manufacturer regarding inadequate clearance in certain cases following installation of the rudder trim switch, the FAA has determined that replacement of the rudder trim control knob with a new knob, even with a subsequent inspection for clearance, would not fully correct the identified unsafe condition. However, as noted by the commenter, replacement of the rudder trim control knob with an improved new knob is expected to provide adequate clearance in all cases between panel 408VU and the rudder trim control knob. Therefore, the FAA considers that the appropriate course of action is to require such replacement in this AD. In order to allow sufficient time for operators to comply with the new requirement, the replacement of the knob with an improved new knob would be required within 10 months after the effective date of this AD.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–27–6037 (for Model A300–600 series airplanes) and A310–27–2084 (for Model A310 series airplanes), both Revision 01, both dated September 29, 1998. The original service bulletins, dated February 12, 1997, are cited in paragraph (a)(1) of the previous supplemental NPRM as the appropriate sources of service information for accomplishment of replacement of the rudder trim switch in the flight compartment with a new switch having a longer shaft and modification of wiring in panel 408VU. Revision 01 of these service bulletins is essentially identical to the original service bulletins, except that certain procedures are clarified and maintenance manual references are revised.

Airbus also has issued new Service Bulletins A310–27–2087, dated October 2, 1998, and Revision 01, dated February 17, 1999 (for Model A310 series airplanes); and A300–27–6042, dated October 2, 1998, and Revision 01, dated February 17, 1999 (for Model A300–600 series airplanes). These service bulletins describe procedures for replacement of the rudder trim control knob with an improved new knob.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified these service bulletins as mandatory and issued French airworthiness directive 1999–012–275(B), dated January 13, 1999, in order to assure the continued airworthiness of these airplanes in France.

Conclusion

The FAA concludes that the previous supplemental NPRM must be revised to require replacement of the rudder trim knob with an improved new knob, in accordance with the new service bulletins described previously. Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment. The FAA also has revised the applicability of this supplemental NPRM to exclude airplanes on which Airbus Modification 11874 has been accomplished.

Cost Impact

The FAA estimates that 90 airplanes of U.S. registry would be affected by this proposed AD.

Replacement of the rudder trim switch and modification of the wiring would take approximately 7 work hours per airplane to accomplish, 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 this action on U.S. operators is estimated to be $37,800, or $420 per airplane.

Replacement of the rudder trim control knob would take approximately 1 work hour per airplane to accomplish, 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 this action on U.S. operators is estimated to be $5,400, or $60 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:

Airbus Industrie: Docket 96–NM–194–AD.

Applicability: Model A310 and A300–600 series airplanes, certificated in any category; except those on which Airbus Modification 11874 [reference Airbus Service Bulletin A310–27–2087 (for Model A300 series airplanes) or A300–27–6042 (for Model A300–600 series airplanes), both dated October 2, 1998] has been accomplished.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent and uncommanded rudder trim activation, which could result in yaw and roll excursions and consequent reduced controllability of the airplane, accomplish the following:

Corrective Actions

(a) Within 90 days after the effective date of this AD, replace the rudder trim switch, part number (P/N) 097–023–00, in the flight compartment, with a new switch, P/N 097–023–01; and modify the wiring in panel 408VU; in accordance with Airbus Service Bulletin A310–27–2084, Revision 01 (for Model A310 series airplanes), or A300–27–6037, Revision 01 (for Model A300–600 series airplanes); both dated September 29, 1998; as applicable.

Note 2: Accomplishment of the actions required by paragraph (a) of this AD in accordance with Airbus Service Bulletin A310–27–2084 (for Model A310 series airplanes), or A300–27–6037 (for Model A300–600 series airplanes), both dated February 12, 1997; as applicable; is acceptable for compliance with that paragraph.

(b) Within 10 months after the effective date of this AD, replace the rudder trim control knob on the rudder trim switch with an improved new knob in accordance with Airbus Service Bulletin A310–27–2087, Revision 01 (for Model A310 series airplanes); or A300–27–6042, Revision 01 (for Model A300–600 series airplanes); both dated February 17, 1999; as applicable.

Note 3: Accomplishment of the actions required by paragraph (b) of this AD in accordance with Airbus Service Bulletin A310–27–2087 (for Model A310 series airplanes), or A300–27–6042 (for Model A300–600 series airplanes); both dated October 2, 1998; as applicable; is acceptable for compliance with that paragraph.

Spares

(c) As of the effective date of this AD, no person shall install in the flight compartment of any airplane a rudder trim switch having P/N 097–023–00.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 5: The subject of this AD is addressed in French airworthiness directives 97–111–219(B), dated May 7, 1997, and 1999–012–275(B), dated January 13, 1999.

Issued in Renton, Washington, on September 28, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–25770 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–303–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, A300–600 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 Airbus Model A300, A310, and A300–600 series airplanes, that currently requires a one-time operational test and repetitive functional tests of the free fall control mechanism of the landing gear to ensure proper release of the main landing gear (MLG), and corrective action, if necessary. It also requires eventual modification of the free fall control mechanism of the landing gear, which constitutes terminating action for the repetitive functional tests. That amendment was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This proposed AD would require, for certain airplanes, that the modification of the free fall control mechanism of the landing gear be accomplished in accordance with a corrected version of the manufacturer's service bulletin. The actions specified by this proposal are intended to prevent malfunction of the free fall control mechanism of the landing gear, which could result in the inability to extend the MLG in the event of failure of the hydraulic extension system.

DATES: Comments must be received by November 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–303–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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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–303–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–303–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 29, 1998, the FAA issued AD 98–14–13, amendment 39–10646 (63 FR 36832, July 8, 1998), applicable to certain Airbus Model A300, A310, and A300–600 series airplanes, to require a one-time operational test and repetitive functional tests of the free fall control mechanism of the landing gear to ensure proper release of the main landing gear (MLG), and corrective action, if necessary. It also requires eventual modification of the free fall control mechanism of the landing gear, which constitutes terminating action for the repetitive functional tests. That amendment was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent malfunction of the free fall control mechanism of the landing gear, which could result in the inability to extend the MLG in the event of failure of the hydraulic extension system.

Actions Since Issuance of Previous Rule

Since issuance of AD 98–14–13, the manufacturer and the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, have advised the FAA that an error exists in Airbus Service Bulletin A310–32–2111, Revision 01, dated October 10, 1997. That service bulletin describes procedures for modification of the free fall control mechanism of the landing gear on Airbus Model A310 series airplanes, and was referenced as the appropriate source of service information for the modification of Airbus Model A310 series airplanes required by that AD. Certain part numbers shown in that service bulletin are incorrect for one of the two telescopic rod assemblies of the free fall control mechanism of the MLG. This error was corrected in Revision 02, dated June 23, 1998, of Airbus Service Bulletin A310–32–2111.

The FAA now has determined that further rulemaking action is necessary to require the modification of Airbus Model A310 series airplanes, described previously, to be accomplished in accordance with Revision 02 of Airbus Service Bulletin A310–32–2111, and, if the modification was installed in accordance with an earlier service bulletin revision, removal of the discrepant parts and installation of the correct part number parts.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–32–0425 (for Model A300 series airplanes), A300–32–6072 (for Model A300–600 series airplanes), and A310–32–2111 (for Model A310 series airplanes); all Revision 02; all dated June 23, 1998. These service bulletins describe procedures for modification of the free fall control mechanism of the landing gear. The modification includes removing telescopic rods and cranks or crank assemblies from the MLG part of the free fall control mechanism of the landing gear, replacing the telescopic rods with new parts, and replacing the cranks or crank assemblies with improved parts. Accomplishment of the modification eliminates the need for the repetitive inspections described previously.

The procedures for the modification in Revision 02 of the service bulletins for Model A300 and A300–600 series airplanes are identical to those described in Revision 01 of the service bulletins (which were referenced in AD 98–14–13). As discussed previously, the procedures for the modification in Revision 02 of the service bulletin for Model A310 series airplanes differ from those described in Revision 01 of the service bulletin (which was referenced in AD 98–14–13) in that certain part numbers for one of the two telescopic rod assemblies have been corrected in Revision 02.

Accomplishment of the actions specified in the service bulletins described previously is intended to adequately address the identified unsafe condition. The DGAC classified the service bulletins as mandatory and issued French airworthiness directive 97–113–221(B) R2, dated August 12, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) 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 supersede AD 98–14–13 to continue to require a one-time operational test and repetitive functional tests of the free fall control mechanism of the landing gear to ensure proper release of the main landing gear (MLG), and corrective action, if necessary. The proposed AD would continue to require eventual modification of the free fall control mechanism of the landing gear, which constitutes terminating action for the repetitive functional tests. The actions would be required to be accomplished in accordance with the service bulletins described previously. This action would require, for certain airplanes, that the modification of the free fall control mechanism of the landing gear be accomplished in accordance with a later corrected version of the manufacturer's service bulletin.

Explanation of Compliance Time for Model A310 Series Airplanes

Operators should note that, while the appropriate source of service information that would be required for this AD for Model A310 series airplanes has changed, the compliance time remains the same. The FAA has determined that the compliance time, as proposed, represents an appropriate interval in which the modification can be accomplished in accordance with Revision 02 of Airbus Service Bulletin A310–32–2111 in a timely manner and still maintain an adequate level of safety.

Cost Impact

The FAA estimates that 24 Model A300 series airplanes, 41 Model A310 series airplanes, and 61 Model A300–600 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 3 work hours per airplane to accomplish the currently required operational test, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required operational test on U.S. operators is estimated to be $22,680, or $180 per airplane.

It would take approximately 2 work hours per airplane to accomplish the currently required functional test, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required functional test on U.S. operators is estimated to be $15,120, or $120 per airplane, per test cycle.

It would take approximately 26 work hours per airplane to accomplish the currently required modification on Model A300 and A300–600 series airplanes, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,630 per airplane. Based on these figures, the cost impact of the currently required actions on U.S. operators of Model A300 or A300–600 series airplanes is estimated to be $356,150, or $4,190 per airplane.

It would take approximately 28 work hours per airplane to accomplish the modification on Model A310 series airplanes, at an average labor rate of $60 per work hour. Required parts would cost approximately $3,710 per airplane. Based on these figures, the cost impact of the currently required actions on U.S. operators of Model A310 series airplanes is estimated to be $220,990, or $5,390 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 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 39–10646 (63 FR 36832, July 8, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 98–NM–303–AD. Supersedes AD 98–14–13, Amendment 39–10646.

Applicability: Model A300, A300–600, and A310 series airplanes, certificated in any category, as identified below:

- Model A300 and A300–600 series airplanes on which Airbus Modification 02781 has been accomplished and on which neither Airbus Modification 03433 nor 04443 has been accomplished;
- Model A310 series airplanes on which Airbus Modification 02781 has been accomplished and on which Airbus Modification 03433 has not been accomplished; and
- Model A310 series airplanes on which Airbus Service Bulletin A310–32–2111, dated March 10, 1997, or Revision 01, dated October 10, 1997; has been accomplished.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent malfunction of the free fall control mechanism of the landing gear, which could result in the inability to extend the main landing gear (MLG) in the event of failure of the hydraulic extension system, accomplish the following:

Restatement of Actions Required by AD 98–14–13, Amendment 39–10646

(a) Within 600 flight hours after August 12, 1998 (the effective date of AD 98–14–13, amendment 39–10646), perform a one-time operational test of the free fall control mechanism of the landing gear to ensure proper release of the MLG for extension by free fall, in accordance with Airbus Industrie All Operator Telex (AOT) 32–14, dated February 3, 1997, or Revision 01, dated March 13, 1997. If any discrepancy is detected in the functioning of the free fall control mechanism of the landing gear, prior to further flight, readjust the mechanism and repeat the operational test in accordance with the AOT. If any discrepancy is detected in the second operational test, prior to further flight, rerig the free fall control mechanism in accordance with the AOT, and accomplish the actions required by paragraph (b) of this AD.

(b) Within 10 months after August 12, 1998, perform a functional test of the free fall control mechanism of the landing gear to ensure proper release of the MLG for extension by free fall, in accordance with Airbus Industrie AOT 32–14, dated February 3, 1997, or Revision 01, dated March 13, 1997. Thereafter, repeat the functional test of the free fall control mechanism of the landing gear at intervals not to exceed 12 months, until the modification required by paragraph (c) or (d) of this AD has been accomplished. During any test performed in accordance with paragraph (b) of this AD, if the free fall control mechanism of the landing gear fails to fully extend the MLG, prior to further flight, readjust or rerig the mechanism in accordance with the AOT.

(c) For Model A300 and A300–600 series airplanes: Within 66 months after August 12, 1998, modify the free fall control mechanism of the landing gear in accordance with Airbus Industrie Service Bulletin A300–32–0425, Revision 02 (for Model A300 series airplanes); or A300–32–6072, Revision 02 (for Model A300–600 series airplanes); each dated June 23, 1998; as applicable. Accomplishment of the modification constitutes terminating action for the repetitive functional tests required by paragraph (b) of this AD.

Note 2: Modifications accomplished in accordance with Airbus Industrie Service Bulletin A300–32–0425, Revision 01 (for Model A300 series airplanes); or A300–32–6072, Revision 01 (for Model A300–600 series airplanes); each dated October 10, 1997; are acceptable for compliance with the requirements of paragraph (c) of this AD.

New Actions Required by This AD

(d) For Model A310 series airplanes: Within 66 months after August 12, 1998, modify the free fall control mechanism of the landing gear in accordance with Airbus Industrie Service Bulletin A310–32–2111, Revision 02, dated June 23, 1998. Accomplishment of the modification constitutes terminating action for the repetitive functional tests required by paragraph (b) of this AD.

Note 3: For Airbus Model A310 series airplanes, only a modification accomplished in accordance with Airbus Industrie Service Bulletin A310–32–2111, Revision 02, dated June 23, 1998, is acceptable for compliance with the requirements of paragraph (d) of this AD.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 5: The subject of this AD is addressed in French airworthiness directive 97–113–221(B) R2, dated August 12, 1998.

Issued in Renton, Washington, on September 28, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–25769 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–17]

Proposed Establishment of Class E Airspace; Russian Mission, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Russian Mission, AK. The establishment of two Global Positioning System (GPS) instrument approach procedures at Russian Mission Airport have made this action necessary. The Russian Mission Airport status will change from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). Adoption of this proposal would result in adequate controlled airspace for aircraft flying IFR procedures at Russian Mission, AK.

DATES: Comments must be received on or before November 19, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 99–AAL–17, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at.

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. 99–AAL–17.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, 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

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the Federal Register's web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su__docs/aces/aces140.html.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT SECTION.**

The Proposal

The FAA proposes to amend 14 CFR part 71 by establishing Class E airspace at Russian Mission, AK, due to the development of two GPS instrument approach procedures. The intended effect of this proposal is to provide controlled airspace for IFR operations at Russian Mission, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The 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 established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as

the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, 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

In consideration of the foregoing, 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 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Russian Mission, AK [New]

Russian Mission Airport
(Lat. 61°46′47″ N., long. 161°19′10″ W.)

That airspace extending upward from 700 feet above the surface within 6.2-mile radius of the Russian Mission Airport, and that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 62°10′00″ N. long. 162°45′00″ W., to lat. 62°34′00″ N. long. 160°30′00″ W., to lat. 61°30′00″ N. long. 160°30′00″ W., along lat. 61°30′00″ to lat 61°30′00″ N. long. 162°45′00″ W., to the point of beginning.

* * * * *

Issued in Anchorage, AK, on September 28, 1999.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–25851 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–42]

Proposed Modification of Class E Airspace; Marquette, MI; Proposed Revocation of Class E Airspace; Sawyer, MI, and K.I. Sawyer, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed relemaking; extension of comment period.

SUMMARY: This notice announces an extension of the comment period on a Notice of Proposed Rulemaking which proposes to modify Class E airspace at Marquette, MI, and revoke the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI. This action is being taken because subsequent to the publication of the Notice of Proposed Rulemaking, announcement was made of the closure of the Marquette County Airport on September 23, 1999. This requires a minor modification to the legal description for the Class E airspace for Marquette, MI.

DATES: Comments must be received on or before October 20, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–42, 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: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Background

Airspace Docket No. 99–AGL–42, published on August 4, 1999 (64 FR 42300) proposed to modify Class E airspace at Marquette, MI, and revoke the Class E airspace at Sawyer, MI, and R.I. Sawyer, MI. This action will extend the comment period closing date on that airspace docket from September 20, 1999 to October 20, 1999, to allow an additional 30 days for comments.

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 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

AGL MI E2 Sawyer, MI [Removed]

* * * * *

AGL MI E2 Marquette, MI [Revised]

Marquette, Sawyer International Airport, MI
(Lat. 46°21′13″ N., long. 87°23′45″ W.)

Within a 4.6-mile radius of Sawyer International Airport.

* * * * *

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

* * * * *

AGL MI E5 Sawyer, MI [Removed]

* * * * *

AGL MI E5 K.I. Sawyer, MI [Removed]

* * * * *

AGL MI E5 Marquette, MI [Revised]

Marquette, Sawyer International Airport, MI
(Lat. 46°21′13″ N., long. 87°23′45″ W.)
Gwinn VOR/DME
(Lat. 46°21′32″ N., long. 87°23′50″ W.)

That airspace extending upward from 700 feet above the surface within an 7.1-mile radius of the Sawyer International Airport, and that airspace extending upward from 1,200 feet above the surface within a 35.0-mile radius of the Gwinn VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on September 10, 1999.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 99–25855 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 193

[Docket No. FAA–1999–6001; Notice No. 99–14]

RIN 2120–AG36

Protection of Voluntarily Submitted Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On July 26, 1999, the FAA published a Notice of Proposed Rulemaking (NPRM) regarding protection of voluntarily submitted information and invited comments for a 60-day period. The comment period closed on September 24, 1999; however, the FAA is reopening the comment period for an additional 30 days in response to a request from the National Transportation Safety Board (NTSB). Per NTSB, the reopening of the comment period is needed to permit NTSB, and other affected parties, additional time to develop comments responsive to Notice No. 99–14.

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

ADDRESSES: Comments on this proposed rulemaking should be mailed, or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–6001, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: http://dms.dot.gov at anytime. Commenters, who wish to file comments electronically, should follow the instructions on the DMS website.

FOR FURTHER INFORMATION CONTACT: Marisa Mullen, Office of Rulemaking, ARM–205, or Mardi Thompson, Office of Assistant Chief Counsel, AGC–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202 267–7653 or (202) 267–3073, respectively.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanies by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Comments wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–1999–6001.'' The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339) or the Government Printing Office (GPO)'s electronic bulletin board service (telephone: (202) 512–1661.

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access.gpo.gov/nara access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future rulemaking document should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On July 26, 1999, the FAA published in the **Federal Register** (64 FR 40471) Notice No. 99–14, entitled ''Protection of Voluntarily Submitted Information'' that would add a new part to provide that certain information submitted to the FAA on a voluntary basis would not be disclosed. This proposal would implement a new statutory provision and is intended to encourage people to provide information that will assist the FAA in carrying out its safety and security duties. The comment period closed September 24.

By requests dated September 15 and 22, NTSB asked that the comment period by extended 30 days to permit a more careful review and consideration of the proposed rule.

The FAA has determined that a reopening of the comment period will allow NTSB, and others as well, additional time for a more thorough review of applicable issues and questions raised by the NPRM, and the drafting of responsive comments. The FAA recognizes, in addition, that the intervening holiday period may have impeded the ability of interested persons to formulate comprehensive responses to the issues in the NPRM.

In order, therefore, to give all interested persons additional time to complete their comments, the FAA finds that it is in the public interest to reopen the comment period for thirty (30) days.

Issued in Washington, DC, on September 29, 1999.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 99–25853 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM98–13–002; Order No. 602–B]

Complaint Procedures

Issued September 29, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on rehearing.

SUMMARY: On July 28, 1999, the Commission issued Order No. 602–A, an order on rehearing and clarification of its final rule revising the Commission's complaint procedures (Order No. 602). On August 27, 1999, a request for rehearing of Order No. 602–A was filed. The petitioners are concerned that removal of references to ''preliminary'' and ''interim'' relief would somehow preclude a complainant from seeking what it characterizes as ''immediate'' or ''early'' Commission action. The order denies rehearing but clarifies that under the complaint regulations a potential complainant may request ''immediate'' action on the merits of its claims and that any complaint in which time is of the essence could be filed under the Fast Track procedure in § 385.206(h).

FOR FURTHER INFORMATION CONTACT: David Faerberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426 (202) 208–1275.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 8.0. User assistance is available at 202–208–2474 or by E-mail to cips.master@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

On July 28, 1999, the Commission issued Order No. 602–A,[1] an order on rehearing and clarification of its final rule revising the Commission's complaint procedures (Order No. 602).[2] A request for rehearing has been filed urging the Commission to add the phrase ''immediate remedial action'' to the regulations to replace the references to preliminary relief that were deleted by Order No. 602–A.

Order No. 602 revised the Commission's regulations governing complaints filed under the Federal Power Act, the Natural Gas Act, the Natural Gas Policy Act, the Public Utility Regulatory Policies Act of 1978, the Interstate Commerce Act, and the Outer Continental Shelf Lands Act. Among other things, Order No. 602 provided that a complaint could include a request for preliminary relief pending a final merits decision on the complaint itself. The order stated that the standard for granting affirmative preliminary relief would be that employed by the courts for such relief: (1) likelihood of success on the merits; (2) whether irreparable injury to the complainant will occur if the relief is not granted; (3) whether the injury outweighs harm to the respondent or other parties if the relief is granted; and (4) other public interest considerations.[3]

In Order No. 602–A, responding to rehearing requests, the Commission eliminated the preliminary relief procedure and clarified what types of relief the Commission may provide under the complaint rule. The Commission made it clear that it would act only where it has authority under the various statutes administered by the Commission. The Commission acknowledged that use of certain terminology in the final rule may have led to confusion and concern on the part of many parties. The Commission eliminated all references to preliminary relief other than stays or extensions of time in the complaint regulations. In addition, the standards in § 385.206 (b)(7)(i) through (iv), which were based on *Virginia Petroleum Jobbers Ass'n* v. *FPC,* 259 F.2d 921 (D.C. Cir. 1958), were deleted. These changes were designed to eliminate certain parties' concern that the Commission was attempting to establish procedures for granting relief akin to preliminary injunctions under standards different than those specified in the statutes administered by the Commission.

The Commission stated that there may be cases in which it could issue what could be categorized as an ''interim'' or ''preliminary'' order in a complaint proceeding pursuant to existing authorities. For example, the Commission stated that a complainant may assert that a respondent's conduct is so egregious or the evidence is so substantial supporting its case that the Commission needs to take some immediate action. A complainant could indicate that its evidence is so substantial as to establish a *prima facie* case of a violation of the relevant statutory standard or regulatory requirement. The Commission stated that if the Commission were to find the complainant's case compelling based upon substantial evidence, the Commission *sua sponte* could issue a show cause or declaratory order based on the facts known at that time prior to the answer being filed. The respondent would then be directed to address the requirements of the order rather than file an answer. The Commission stated that this type of relief may be appropriate in certain limited circumstances and is within the Commission's authority to grant. Further, the Commission stated that it could also take such other ''interim'' or ''preliminary'' actions, as it can now, such as issuing an order granting a stay or an order granting an extension of time, stop work order, or other orders contemplated by certificate or hydroelectric licensing conditions. Finally, the Commission stated that a complainant may request forms of relief which it believes is within the Commission's authority to grant and the Commission will decide whether the relief may be granted on a case-by-case basis.

On August 27, 1999, a request for rehearing of Order No. 602–A was filed by Undersigned Parties (hereinafter

[1] 64 FR 43600 (August 11, 1999), FERC Stats. & Regs. ¶ 31,076 (1999).

[2] 64 FR 17087 (April 8, 1999), FERC Stats. & Regs. ¶ 31,071 (1999).

[3] Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958).

referred to as the Petitioners).[4] The Petitioners assert that a complainant's right to some form of prompt or immediate Commission remedy is essential in a complaint procedure responsive to the needs of the restructured gas and electric power industries. The Petitioners submit that some form of Commission remedial action as soon as possible after the filing of a formal complaint must be available. The Petitioners contend that to suggest that such remedies might be within the Commission's authority to grant while removing from the Commission's new and comprehensive complaint regulations any reference to such remedies, creates ambiguity about whether the Commission truly intends to make early remedial action a component of its revised complaint procedure. The Petitioners argue that where, as here, the Commission is adopting a comprehensive new complaint procedure, it should include therein some codification of each element of its new complaint policy.

The Commission finds it unnecessary to modify the regulations as requested because they already encompass the kind of relief sought. In the Commission's view, there is a difference between preliminary and interim relief on the one hand, and what the Petitioners refer to as ''immediate'' or ''early'' Commission action on complaints on the other hand. References to preliminary and interim relief, as well as the use of the *Virginia Jobbers* standards, led many parties to believe that the Commission would be granting relief akin to temporary restraining orders or preliminary injunctions, and that such relief would be based on standards other than those contained in the applicable statutes. Order No. 602–A eliminated such references to make clear that the Commission would not and could not exercise any authority beyond its statutory authority.

The elimination of the references to preliminary and interim relief does not mean that the Commission lacks the authority to address complaints quickly. The Petitioners have recognized that the Commission may issue an interim order, which resolves some issues while leaving others to be determined at a later time, that is based on findings made pursuant to the standards contained in NGA section 5 or FPA section 206. Moreover, as recognized in Order No. 602–A, the Commission could also take such interim actions as granting a stay, granting an extension of time, issuing stop work orders or others orders contemplated by certificate or hydroelectric license conditions, or issuing show cause orders. Other actions, such as issuing show cause or declaratory orders, while not final action, also convey a message to the parties that in the Commission's view a complainant has presented a solid case for the relief sought that will be granted in the absence of convincing evidence to the contrary.

The Commission recognizes that timely redress of a complaint is essential in today's constantly evolving energy markets. In Order No. 602, the Commission introduced the Fast Track procedures precisely for this reason. Because the Commission realizes that time is of the essence in many complaint proceedings, it committed to issuing merits order on Fast Track complaints within 20 days after the answer is filed.[5] The Commission also stated that if the development of a factual record was necessary to the resolution of a complaint, hearing procedures could be compressed into a few days.

The Petitioners request for rehearing essentially deals with the timing of Commission action, hence their use of the words ''prompt,'' ''immediate'' and ''early.'' In the Commission's view, the Petitioners'' concerns can be adequately addressed under the regulations adopted because any complaint in which time is of the essence can be filed under the Fast Track procedure in § 385.206(h). A party filing such a complaint can show that the standard complaint resolution process may not provide timely relief as quickly as circumstances may demand and that expedited resolution under the Fast Track is thus appropriate. In resolving the merits of a complaint, whether under the Fast Track or standard procedures, the Commission must apply the standards contained in the statutes it administers. The Commission thus can reach a final resolution under its governing statutes through standard procedures or using expedited processing.

The modifications contained in Order No. 602–A were not meant to suggest that complaints could only be resolved through a lengthy administrative hearing. As § 385.206(h)(1) states, ''Fast Track procedures may include expedited action on the pleadings by the Commission, expedited hearing before an ALJ, or expedited action on requests for stay, extension of time, or other relief by the Commission or an ALJ.'' The revised complaint regulations do not prevent a potential complainant from requesting ''immediate'' action on the merits of its claims, but rather, are specifically designed to address particular situations that demand the immediate resolution requested by the Petitioners. The Petitioners' concerns thus already have been taken into account and incorporated into the regulations to provide for the prompt and immediate resolution they seek.

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission denies rehearing.

By the Commission.

David P. Boergers,

Secretary.

[FR Doc. 99–25797 Filed 10–4–99; 8:45 am]

BILLING CODE 6717–01–P

[4] The Undersigned Parties consist of the Pipeline Customer Coalition, American Public Power Association, Transmission Access Policy Study Group, National Rural Electric Cooperative Association, Pennsylvania Office of Consumer Advocate, and Transmission Dependent Utility Systems.

[5] See, for example, North American Energy Conservation, Inc. v. CNG Transmission Corporation, 88 FERC ¶ 61255 (1999), where the answer to the complaint was filed on September 3, 1999, and the order on the merits of the complaint was issued September 17, 1999.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 314 and 601

RIN 0910–AA89

[Docket No. 98N–0237]

New Drug and Biological Drug Products; Evidence Needed to Demonstrate Efficacy of New Drugs for Use Against Lethal or Permanently Disabling Toxic Substances When Efficacy Studies in Humans Ethically Cannot Be Conducted

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its new drug and biological product regulations to identify the information needed to provide substantial evidence of the efficacy of new drug and biological products used to reduce or prevent the toxicity of chemical, biological, radiological, or nuclear substances. This proposal would apply when the traditional efficacy studies in humans are not feasible and cannot be ethically

conducted under FDA's regulations for adequate and well-controlled studies in humans. The agency is proposing this action because it recognizes the need for adequate medical responses to protect or treat individuals exposed to these lethal or permanently disabling toxic substances.

DATES: Submit written comments by December 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. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St., NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Bonnie M. Lee, Division of Compliance Policy, Office of Enforcement, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, Rockville, MD 20852, 301–827–0415.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA is proposing to amend its new drug and biological product regulations to identify the information needed to provide substantial evidence of the efficacy of new drug and biological products used to reduce or prevent the toxicity of chemical, biological, radiological, or nuclear substances when adequate and well-controlled efficacy studies in humans cannot be ethically conducted because they would involve administering a potentially lethal or permanently disabling toxic substance or organism to healthy human volunteers without a proven treatment and field trials (assessment of use of the product after accidental or hostile exposure to the substance) are not feasible. The agency is proposing that, in these situations, certain new drug and biological products that are intended to reduce or prevent serious or life-threatening conditions could be approved for marketing based on evidence of effectiveness derived from appropriate studies in animals, without adequate and well-controlled efficacy studies in humans (21 CFR 314.126). Under the proposed rule, FDA could rely on the evidence from animal studies where: (1) There is a reasonably well understood pathophysiological mechanism for the toxicity of the chemical, biological, radiological, or nuclear substance and its amelioration or prevention by the product; (2) the effect is independently substantiated in multiple animal species, including species expected to react with a response predictive for humans; (3) the animal study endpoint is clearly related to the desired benefit in humans, which is generally the enhancement of survival or prevention of major morbidity; and (4) the data or information on the kinetics and pharmacodynamics of the product or other relevant data or information in animals and humans allows selection of an effective dose in humans, and it is therefore reasonable to expect the effect of the product in animals to be a reliable indicator of its efficacy in humans. It is also expected that the data or information on the kinetics and pharmacodynamics of the drug or biological product will be sufficiently well understood in both animals and humans or there will be some other relevant data or information in animals and humans to allow selection of an effective dose in humans.

Safety evaluation is not discussed in this proposal because the agency believes that, with one limitation, the safety of these products can be studied in human volunteers similar to the people who would be exposed to the product. The limitation is the inability to examine possible adverse interactions between the toxic substance and the new product. Safety and efficacy of a product are ordinarily studied together in the patient population at risk or with the condition to be treated. An interaction of the pharmacologic effects of the two should emerge in the animal studies of efficacy but certain kinds of effects are not easily detected in animals (e.g., effects on memory or cognitive function). Possible interactions between the product and underlying disease or another substance to which the user might be concomitantly exposed can be evaluated by studying safety in a population similar to the ultimate user population and under conditions approximating those in which the drug will be used. In section VII of this document, the agency seeks comments on the safety evaluation of these products.

This proposal will not apply if product approval can be based on standards described elsewhere in FDA's regulations (e.g., accelerated approval based on human surrogate markers or clinical endpoints other than survival or irreversible morbidity).

II. Background

In the **Federal Register** of July 31, 1997 (62 FR 40996), FDA published a document entitled ''Request for Comments'' (hereinafter referred to as the July 1997 request for comments) related to the use of drugs and biological products in military and other emergency settings to treat or prevent toxicity of chemical or biological substances. The July 1997 request for comments included specific questions in the three following subject areas.

First, the agency asked whether its rule permitting waiver of informed consent in very limited circumstances involving military exigencies should be revoked or amended, and if so, how. In the **Federal Register** of December 21, 1990 (55 FR 52814), FDA issued an interim rule (''Informed Consent for Human Drugs and Biologics; Determination that Informed Consent is Not Feasible'') allowing the Commissioner of Food and Drugs (the Commissioner) to make the determination, in response to product specific requests from the Department of Defense (DOD), that obtaining informed consent from military personnel for the use of an investigational drug or biological product is not feasible in certain battlefield or combat-related situations.

Second, because information on a product's efficacy in reducing or preventing toxicity of chemical or biological substances is important, the agency also asked when, if ever, it is ethical to expose volunteers to toxic chemical and biological substances to test the efficacy of products that may be used to provide potential protection against those substances.

Third, because these products are critically important, even if they cannot be ethically tested in humans to demonstrate efficacy, the agency asked what evidence of efficacy, other than that from human trials, would be appropriate to demonstrate the safety and efficacy of products that may provide protection against toxic chemical and biological substances (62 FR 40996).

Elsewhere in this **Federal Register**, consistent with the Defense Authorization Act of 1998, FDA has published an interim final rule revoking the 1990 interim final rule and establishing new criteria and standards for the President of the United States to apply in making a determination that informed consent is not feasible or is contrary to the best interests of the individual recipients. That document addresses the first issue. This notice addresses the second and third issues.

A. When Is It Ethical to Expose Volunteers to Toxic Chemical and Biological Substances to Test the Efficacy of Products That May Be Used to Provide Potential Protection Against Those Substances?

In response to the July 1997 request for comments, FDA received nine comments on this question.

Two comments stated that it is never ethical to expose volunteers to toxic chemicals or biological substances to test the efficacy of products that may be used to provide potential protection against those substances.

Another comment, which appeared to conclude that human trials could perhaps be carried out in some cases, stressed that a ''volunteer'', by definition, must be fully aware of any harm that he or she may incur as a result of participation in such a study. All information regarding exposures must be relayed to the volunteer, and the volunteer should confirm that he or she accepts those risks. If data from animal testing are supplied, the volunteer must also be fully aware that the data may not be relevant to how a human may respond. This comment concluded that ''[a]nimal testing, an abhorrent practice, often puts human health in peril via misleading data.'' The comment also suggested that the developers of these drugs, if they are confident that they are both safe and effective, should offer themselves for final testing of safety and efficacy. This comment also stated that it seemed more ethical to attempt antidote experiments on ''victims of such poisonings in regions where such abhorrent 'weapons' are used to create morbidities'' rather than deliberately exposing any healthy individuals to such poisons for the purpose of testing antidotes, and concluded the comment with the suggestion that in vitro or computer-model testing would be preferable to human antidote testing unless one could ensure fully informed consent from a nonvulnerable population.

A fourth comment stated that it is not ethical to conduct clinical testing with toxic chemical or biological substances unless there is certainty that their effects are fully reversible. Because it is not scientifically possible to prove that substances are completely safe and their effects fully reversible, such studies are not possible.

Two comments did not appear to think such testing was impossible, but they pointed to significant difficulties. The comments noted that testing the efficacy of any product is never ethical unless the subjects truly volunteer with full informed consent. The comments suggested that one way to ensure voluntariness and informed consent would be to require that DOD and the Veterans Administration (VA) recruit only non-DOD and non-VA volunteers who are not otherwise ''beholden'' to these agencies for their employment or pensions. The comments note that given the risks, it would be highly unlikely that anyone would volunteer, and, therefore, efficacy testing may not be possible.

An additional comment, also apparently reflecting the view that studies might be possible, stated that volunteers should receive experimental products only after being counseled by medical, legal, and religious personnel, and only after being offered a nongovernment ''second opinion.'' The comment stated that all issues of facts should be written, witnessed, and notarized, and each volunteer's family must have access to what, when, and where the individual was exposed to the experimental product.

DOD strongly opposed testing of such products in humans and also stated that testing of sublethal doses of the toxic substances would be uninformative. DOD stated:

> The products under development are to be used to protect service members against lethal exposure to chemical and biological warfare agents. It is never ethical to expose volunteers to such lethal amounts of these agents in order to test the potential effectiveness of pretreatment, treatment or prophylactic products.
>
> Dose or concentration ranging studies are normally required for new or new-indication studies of drugs or biologics. Because response to treatment of sublethal doses of chemical or biological agents (weapons) could not be extrapolated to predict response to higher doses, a lethal dose would be necessary to test the effectiveness of the protective drug or biologic. If lethal doses were given to volunteers, a 100% effective rescue agent would need to be available, in case the protective agent failed and potentially fatal toxicity had to be reversed. Antidotes to probable threat agents do not currently exist.

A public interest group recommended that FDA address the complex issues raised by these questions in a separate proceeding and a separate public forum, noting that the ethical issues raised by these questions are not limited to the evaluation of products for use in the military context, but also arise with respect to products designed to protect individuals who may be exposed to toxic substances in the workplace or in other situations (e.g., exposure to pesticides or industrial toxins).

The agency has reviewed the comments and finds them in accord with its longstanding analysis. Therefore, FDA again concludes that it would be unethical to expose volunteers to potentially lethal or permanently disabling doses of toxic biological, chemical, radiological, or nuclear substances to test the efficacy of products that may be used to provide protection against those substances. Based on this conclusion and in recognition of the need to take all possible steps to protect individuals exposed to such agents, the agency has written this proposal. Section VII of this document discusses specific issues that deserve further consideration. The agency believes that the comments it has received thus far are sufficient for it to proceed with this proposal and that an additional public forum is not necessary before this proposal is issued for comment.

B. What Evidence Would Be Needed to Demonstrate Safety and Efficacy of Products That May Be Used to Provide Protection Against Toxic Chemical and Biological Substances That Cannot Be Ethically Tested in Humans?

FDA received nine comments in response to this question in the July 1997 request for comments. Most of the comments did not address the specific kinds of information that would be needed for approval.

One comment expressed support for the idea of approving such ''emergency'' drugs based on animal studies. Another comment stated that:

> * * * [e]ffectiveness studies in animals and human phase I studies (pharmacokinetic/antibody response) should have resulted in plausible evidence that a protective product will have a reasonable risk/benefit ratio in a combat situation or during an attack on civilians. The phase one studies should include the generation of data in children and take into account anticipated combination(s) with other products and immunization schedules.

A third comment recommended that FDA scientific advisory committees be used to advise, on a case-by-case basis, on data (e.g., nonclinical or surrogate markers of efficacy) required to demonstrate efficacy. Additionally, postmarketing clinical efficacy data could be obtained from, for example, incidents involving accidental exposures by at risk workers or operating forces, and this data could also contribute to the body of ''substantial evidence'' needed to demonstrate efficacy. This comment emphasized that, as with other FDA regulated products, data related to the safety and efficacy of medical products that DOD may want to give to its personnel should be considered on a case-by-case basis, taking into account

the intended indication and levels of medical supervision for product use.

Two comments stressed that while it may not be ethical to test efficacy of these products in humans, this does not preclude testing to demonstrate their safety. (The agency notes that this proposal does not address trials required to demonstrate safety; the safety of these products will be studied under existing rules in human volunteers.) These comments stressed the importance of establishing a product's safety in the specific population ''at issue'' and at the proposed dosage levels. Further, when synergistic exposures or stresses are likely, these should be incorporated into the safety testing as much as possible. For pyridostigmine bromide, in particular, these comments stressed that its safety should be studied under high heat conditions and in combination with insecticides and pesticides, including DEET, Permethrin, Malathion and/or Dursban.

The DOD's comment on this question addressed only the issue of relying on a human surrogate marker (already possible under current regulations at subpart H of part 314 (21 CFR part 314) and subpart E of part 601 (21 CFR part 601) (the Accelerated Approval regulations)) and did not consider the case where there is no human surrogate marker that is at least reasonably likely to predict clinical efficacy in humans. DOD added, however, that:

> In addition, other information should be obtained in order to better understand and perhaps predict the reactions of the drug or vaccine when given to a large group of DoD personnel. These might include metabolic and disposition pathways in both the animal model and in humans and population studies in humans to understand clinical covariates to predict response ranges in very large groups.

The Public Citizen Litigation Group without further elaboration rejected as illegal the idea that animal data or other nonhuman data could serve as a basis for approval of an antidote and stated that both the ethical standards for informed consent as well as the standards for establishing safety and efficacy should apply equally to products used in military and civilian populations.

III. Introduction to the Rule

FDA has determined that the requirement for human studies to demonstrate efficacy has the effect of preventing the development and availability of approved drug and biological products to reduce or prevent serious or life-threatening toxicity resulting from exposure to lethal or permanently disabling toxic biological, chemical, radiological, or nuclear substances.[1] In reaching this conclusion, FDA considered two possible kinds of human efficacy studies: (1) Clinical studies in which the toxic substance is given to volunteers and harm is prevented because the product proves to be fully efficacious, and (2) field studies in which toxicity following an accidental or hostile exposure is reduced or prevented by the product. In many cases involving these products, however, the first kind of study cannot ethically be performed; and, as to the second, there may be no opportunity to conduct them, or such field studies may not provide adequate information.

Although such products may be used, and potentially used widely, under the investigational provisions of the Federal Food, Drug, and Cosmetic Act (the act), which, among other things, require informed consent, this is a suboptimal solution for many reasons. In truly emergent circumstances, where the population needing treatment cannot be identified in advance and may be large, obtaining informed consent may be impossible. Allowing a waiver of the informed consent requirement as ''not feasible'' in circumstances where the product is to be given to competent individuals has proved to be extremely controversial. (See, elsewhere in this issue of the **Federal Register**, FDA's interim final regulations for waiver of informed consent in certain situations related to military combat.) Thus, the agency is presented with two choices for this class of products: (1) Make no adjustments to its current regulations, which would likely severely restrict the ability to use such products; or (2) identify an alternative basis for establishing efficacy for such products, and if safety and efficacy are established, grant marketing approval for the product with appropriate restrictions and requirements, including patient-directed labeling describing the basis of the product approval to help assure the safest possible use. FDA believes that approval should not be withheld for a product that is intended to, and is being widely used to, reduce or prevent the lethal or permanently disabling toxic effects of chemical, biological, radiological, or nuclear substances, that has been fully studied for safety in humans, and that has been determined to be effective based on the best human and animal evidence that can be obtained ethically. Accordingly, FDA is proposing regulations that would describe how efficacy for these products can be demonstrated.

FDA is proposing to amend part 314 by adding subpart I, consisting of §§ 314.600 through 314.650, and to amend part 601 by adding subpart G, consisting of §§ 601.60 through 601.65.

IV. Scope

This proposal would apply to new drug and biological products to be used in the reduction or prevention of serious or life-threatening consequences resulting from exposure to lethal or permanently disabling toxic biological, chemical, radiological, or nuclear substances, where: (1) The products would be expected to provide meaningful therapeutic benefits to patients over existing treatment; (2) the conduct of human challenge/protection efficacy trials would be unethical because it would be necessary to administer a potentially lethal or permanently disabling toxic biological, chemical, radiological, or nuclear substance to human volunteers without a proven effective treatment; and (3) field trials[2] are not feasible. This proposal would not apply to products that could be approved under standards described elsewhere in the regulations (part 314 or part 601), e.g., products for which traditional human efficacy studies could be conducted ethically or for which there is an acceptable human surrogate endpoint or for which accelerated approval would apply. As in past efforts to expedite access to new drugs by accelerating approval (subpart H of part 314 and subpart E of part 601) or facilitating access to investigational agents and speeding development and review of these products (21 CFR 312.34 *Treatment use of an investigational new drug*), FDA proposes to apply these procedures where an important medical need is not adequately met by currently available therapies. If such a need does not exist, the agency believes that the usual procedures provide for the most appropriate and thorough approach to ensuring efficacy of drugs prior to marketing. This proposal is consistent

[1] The agency has expanded the scope of this proposal to include not only biological and chemical substances, but also radiological and nuclear substances in order to include all types of substances that could be lethal or permanently disabling.

[2] As used in this document, ''field trials'' are well-controlled studies that can sometimes be conducted when the toxic substance is naturally occurring and there are individuals who are at risk for exposure to the toxic substance. For example, the anthrax vaccine was approved based on a successful well-controlled field trial in mill workers at high risk for anthrax exposure. In other cases, it is possible that accidental or hostile exposures to toxic substances could be treated and the effects observed. However, the ability to conduct such studies cannot usually be anticipated and their historically controlled nature makes them difficult to interpret.

with the recent changes in the act on fast track products made in the Food and Drug Administration Modernization Act of 1997. Consistent with these changes, FDA is committed to facilitating the development and expediting the review of drugs for serious and life-threatening conditions that address unmet needs (section 506 of the act (21 U.S.C. 356)).

Sponsors are encouraged to meet with FDA early in the drug development process to determine the nature of the regulatory review that FDA will apply.

V. Legal Authority

In developing this rule, FDA considered the question of whether it has the authority to approve a product without determinative efficacy studies in humans when it would be unethical to conduct such studies. FDA also considered, assuming it has such authority, what data, other than determinative efficacy studies in humans, could constitute sufficient evidence of efficacy to support product approval. These questions have arisen recently because of concerns raised regarding the nation's ability to adequately respond to threats of chemical, biological, radiological, and nuclear agents that could be used to cause serious harm to humans. FDA has not previously addressed this issue in any of its regulations. As described in the next paragraphs, FDA has the authority to issue regulations describing the type of evidence that may be the basis of an efficacy determination for drugs and biological products that are therapies for toxic agents in situations where it would be unethical to conduct a clinical investigation in humans to demonstrate efficacy.

FDA approves new drugs under the authority of the act and biologics under section 351 of the Public Health Service Act. The act authorizes the Secretary of Health and Human Services (the Secretary) to issue an order refusing to approve a new drug application if the Secretary finds that ''there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling thereof * * *'' (section 505(d) of the act (21 U.S.C. 355(d).) The term substantial evidence is defined as:

> * * * evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and responsibly be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof.

Id.

In interpreting the term ''substantial evidence,'' FDA has viewed the phrase ''adequate and well-controlled investigations, including clinical investigations'' as meaning that efficacy determinations must include studies of efficacy in humans. The agency's regulations did not contemplate situations in which efficacy studies cannot be ethically conducted in humans, and FDA believes that it would be inconsistent with the statute's public health objectives to conclude that FDA cannot use some other basis for considering the efficacy of such products. The legislative history does not address this issue. Concluding that such products cannot ever be approved because human efficacy trials cannot be conducted is contrary to the public interest and inconsistent with the act's purpose of public health protection. Courts have recognized that remedial statutes such as the act are to be liberally construed consistent with the act's overriding purpose to protect the public health. (*United States* v. *An Article of Drug * * * Bacto-Unidisk*, 394 U.S. 784 (1968).)

FDA has therefore tentatively concluded that, where definitive human efficacy studies cannot be ethically conducted because they would necessarily expose healthy subjects to a potentially lethal or permanently disabling substance, the statutory standard should be interpreted as permitting efficacy to be based on adequate and well-controlled investigations that are not conducted in humans. This conclusion is consistent with the recognition by Congress of the importance of ethical behavior in the study of unapproved products. For example, Congress has acknowledged the need: (1) For informed consent in clinical research (section 505(i)(2) of the act); (2) to have due regard for patients in issuing regulations for investigational use of drugs (section 505(k) of the act); and (3) for experts to act ''fairly and responsibly'' in evaluating efficacy (section 505(d) of the act). Where human efficacy trials cannot be done ethically, experts are without human studies upon which to fairly and responsibly conclude that a product is effective. In the situations described previously, the agency believes that adequate and well-controlled animal studies may provide sufficient data to warrant approval. For FDA to approve products where definitive efficacy studies cannot be conducted in humans there must be sufficient data available to meet the statutory standard. The data must be such that experts are able to fairly and responsibly conclude ''that the drug will have the effect it purports or is represented to have * * *'' in humans. Where data from adequate and well-controlled animal studies meet this standard, FDA may approve the product. Unless such data exist, FDA will not approve the product.

VI. Elements of the Proposal

For the limited types of products within the scope of this proposal, FDA would grant marketing approval for a new drug or biological product on the basis of adequate and well-controlled animal trials when it is scientifically reasonable to expect that the effect of the drug or biological product in animals is reasonably likely to predict clinical benefit in humans. Safety evaluation is not discussed in this proposed rule because the safety of these products can be studied in human volunteers. In order to provide for the safe and effective use of these products, similar restrictions, withdrawal procedures, postmarketing safety reporting requirements, and requirements pertaining to promotional materials contained in the accelerated approval regulations in subpart H of part 314 and in subpart E of part 601 are included in this proposal, with appropriate modifications. (The rationale and authorities for including these requirements remain unchanged and are described in the **Federal Register** of April 15, 1992 (57 FR 13234), proposed accelerated approval regulations.) Thus, the agency intends to require, under §§ 314.610(a) and 601.61(a), postmarketing studies if a product approved under this subpart is used in a situation that makes such studies feasible and ethical. The agency may also require, for example, under §§ 314.610(b) and 601.61(b) that: (1) The product be stored at the control and direction of competent military and civilian emergency governmental personnel; (2) the product be used at the direction of, and as ordered by, competent military and civilian emergency governmental personnel; and (3) applicants be obligated to followup on its use and report to FDA in Phase 4 reports and descriptions of adverse reactions. In addition, in order to assure public knowledge of products approved under this rule, the agency is proposing to add a new requirement pertaining to providing specific information on the product to its recipients (§§ 314.610(c) and 601.61(c)). The agency also intends in most cases to consult on applications to market such products with an advisory committee, supplemented with

appropriate expert consultants, in meetings open to the public in order to receive expert advice on whether a particular set of animal data support efficacy of a product under this rule.

Under the rule, FDA will rely on the efficacy evidence from adequate and well-controlled studies in animals only where: (1) There is a reasonably well-understood pathophysiological mechanism of the toxicity of the substance and its prevention by the product; (2) there is independent substantiation of the effect in multiple animal species, including species expected to react with a response predictive for humans; (3) the animal study endpoint is plainly related to the desired benefit in humans, which is generally the enhancement of survival or prevention of major morbidity; and (4) the data or information on the kinetics and pharmacodynamics of the product or other relevant data or information in animals and humans allows selection of an effective dose in humans, and FDA therefore concludes that the effect of the product in animals is reasonably likely to predict clinical benefit in humans. Where it is possible to conduct human efficacy studies of products, these will continue to be required. Safety evaluation of these products in humans will be required.

To the extent possible, human experience that is potentially relevant should be obtained, such as effects on potential human surrogate markers or studies of low, sublethal doses of the toxic substance, where such doses may be defined and where the studies are sufficiently cautious in design and monitoring. If the surrogate endpoint effect is reasonably likely to predict clinical benefit, and it is possible to design postmarketing studies to confirm effectiveness (which could depend on the occurrence of an unpredictable toxic exposure), such that the drug could be approved under subpart H of part 314 and subpart E of part 601, the accelerated approval regulations, it would not be considered under this proposal.

VII. Discussion

In situations where definitive human efficacy studies cannot be ethically conducted, a possible means of demonstrating efficacy could be through animal studies. FDA seeks comments on the following issues:

1. As indicated previously, the agency has never before permitted a sponsor to rely on animal studies to support a finding of ''substantial evidence'' and approval of a drug under section 505 of the act. Although the agency has attempted to propose a very narrow exception to the need for human studies in a situation where human studies seem truly impossible, the exception might be viewed by some as establishing the principle that animal studies may be relied on ''for good reason'' under the act; other ''good reasons'' might be advanced. What are the risks of the approach taken in this rule, if any, to the efficacy standard? To what extent, if any, would it diminish the efficacy standard? What impact would it have, if any, on how the agency might apply the efficacy standard to other drugs in the future?

2. If the agency proceeds to finalize this rule, are there additional limitations that should be placed on any approval based on animal data? For example, should the agency place additional advertising restrictions on these products, and describe the restrictions and the legal basis for such restrictions?

3. What would make animal data sufficiently predictive of efficacy in humans to warrant product approval based on such data? The agency has identified several elements that are important. These elements include consistency of results across species, and an effect on the same morbidity/mortality endpoint in animals that is of interest in humans together with a good understanding of the mechanisms of the effect of the toxin and the product. Information about the relative sensitivity of the species to the toxin or agent (compared to humans), and consistent dose-response and pharmacokinetic/pharmacodynamic relationships in various animal species might also make animal data more persuasive. Are there other elements that should be considered?

4. How can the correct human dose be selected? Presumably, if multiple animal species show a consistent relation of protective effect to exposure (minimum blood levels, average concentration, etc.), a response of a pharmacodynamic marker, or measure of dose (e.g., milligram (mg)/meter^2 dose, mg/kilogram dose, or cumulative dose), a similar human dose, or a human dose giving the same blood concentration or pharmacologic effect could be chosen. If species differ in their susceptibility to the toxic agent, what approaches could help identify the proper human dose of the drug? For example, would the largest dose (concentration) needed in any species be the best choice?

5. What constitutes ''independent substantiation in multiple animal species'' (i.e., consistency of results across species)? How many species represent a reasonable number and should at least one primate species be included? In what situation(s) might a primate species be unnecessary? If efficacy results across species are not consistent, would a single unprotected species (without clear explanation) undermine the entire premise on which approval would be based? If the inconsistency would not undermine the premise, what are examples of situations where one could conclude a treatment will be effective in humans even though there is an unprotected species and no clear explanation of why it is unprotected?

6. As discussed previously, safety evaluation is not discussed in this document because safety will be studied in human volunteers. If efficacy of a product were demonstrated through animal studies rather than studies in humans, are there special considerations that should apply to the safety data base? If so, what do these special considerations consist of and why should they be applied to the data base? To what extent should interactions with potential concomitant treatments and concomitant environmental exposures be studied?

7. In the July 1997 request for comments, FDA requested comments on: When is it ethical to expose volunteers to toxic chemical and biological substances to test the effectiveness of products that may be used to provide potential protection against those substances? As described earlier in this document, the agency received nine comments, most of which expressed considerable doubt regarding whether it would be ethical to expose volunteers to toxic substances to test the efficacy of these products. Although the agency has concluded in proposing this rule that it will generally not be possible ethically, in the cases described, to conduct human studies, it is also true that it is critically important for a product intended to reduce or prevent lethal consequences to be effective when used. The agency therefore is requesting further comment on this issue. It would be helpful to receive information, with examples if available, on the value of studying sublethal doses of toxins in humans and evaluating the ability of these products to protect against the sublethal effects. This would not be equivalent to testing the product against a full dose of the toxin, but it could support the fundamental similarity of responses in animals and humans to the toxin and the product.

VIII. 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.

IX. Executive Order 12612: Federalism

Executive Order 12612 requires Federal agencies to carefully examine regulatory actions to determine if they would have a significant effect on federalism. Using the criteria and principles set forth in the order, FDA has considered the proposed rule's impact on the States, on their relationship with the Federal Government, and on the distribution of power and responsibilities among the various levels of government. FDA concludes that this proposal is consistent with the principles set forth in Executive Order 12612.

Executive Order 12612 states that agencies formulating and implementing policies are to be guided by certain federalism principles. Section 2 of Executive Order 12612 enumerates fundamental federalism principles. Section 3 states that, in addition to these fundamental principles, executive departments and agencies shall adhere, to the extent permitted by law, to certain listed criteria when formulating and implementing policies that have federalism implications. Section 4 lists special requirements for preemption.

Section 4 of Executive Order 12612 states that an executive department or agency foreseeing the possibility of a conflict between State law and federally protected interests within its area of regulatory responsibility, is to consult with States in an effort to avoid such conflict. Section 4 also states that an executive department or agency proposing to act through rulemaking to preempt State law is to provide all affected States notice and an opportunity for appropriate participation in the proceedings. As required by the Executive Order, States have, through this notice of proposed rulemaking, an opportunity to raise the possibility of conflicts and to participate in the proceedings (section 4(d) and (e)). Consistent with Executive Order 12612, FDA requests information and comments from interested parties, including but not limited to State and local authorities, on these issues of federalism.

X. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). 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). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Title II of the Unfunded Mandates Reform Act (Public Law 104–4) (in section 202) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order and in these two statutes. The agency has determined that this rule is a ''significant regulatory action'' as defined in section 3(f)(4) of the Executive Order because it raises novel policy issues. However, the rule is not an ''economically significant'' rule as defined in section 3(f)(1) of the Executive Order, as it will not have an annual effect on the economy of $100 million or more, nor will it impose material adverse effects. With respect to the Regulatory Flexibility Act (5 U.S.C. 605(b)), this rule will permit products to be approved that could not be approved under existing regulations and very few products will need to meet the requirements of this rule. Therefore, the Commissioner certifies that the rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act, no further analysis is required. Similarly, because the rule does not impose any mandates on State, local, or tribal government, or the private sector that will result in a 1-year expenditure of $100 million or more, FDA is not required to perform a cost-benefit analysis under the Unfunded Mandates Reform Act.

XI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given in the following paragraphs with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: New Drug and Biological Products; Animal Efficacy Studies.

Description: FDA is proposing to amend its new drug and biological product regulations to identify the evidence needed to demonstrate the efficacy of drug and biological products used to treat or prevent the toxicity of chemical, biological, radiological, or nuclear substances when definitive efficacy studies in humans cannot be ethically conducted because they would involve administering a lethal or permanently disabling toxic substance to healthy human volunteers without a proven treatment and when field trials are not feasible. In these circumstances, when it may be impossible to demonstrate efficacy through the adequate and well-controlled studies in humans, FDA is proposing that certain new drug and biological products to treat or prevent serious or life-threatening conditions could be approved for marketing based on studies in animals, without the traditional efficacy studies in humans. FDA is proposing this action because it recognizes the importance of improving medical response capabilities to the use of lethal or permanently disabling chemical, biological, radiological, and nuclear substances in order to protect individuals exposed to these substances.

Respondent Description: Businesses and other for-profit organizations, and nonprofit institutions.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
314.610(b)(3) and 314.630 601.61(b)(3) and 601.63	1	1	1	5	5
314.610(c) and 314.640 601.61(c) and 601.64	1	1	1	240	240
Total					245

[1] There are no capital costs or operating and maintenance costs with this collection of information.

TABLE 2.—ESTIMATED ANNUAL DISCLOSURE/RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
314.610(b)(3) and 314.630 601.61(b)(3) and 601.63	1	1	1	1	1
314.610(c) 601.61(c)	1	1	1	1	1
Total					2

[1] There are no capital costs or operating and maintenance costs with this collection of information.

FDA estimates that only one application of this nature may be submitted every 3 years; however, for calculation purposes, FDA is estimating the submission of one application annually. FDA estimates 240 hours for a manufacturer of a new drug or biological product to develop patient labeling, and to submit the appropriate information and promotional labeling to FDA. At this time, FDA cannot estimate the number of postmarketing reports for adverse drug or biological experiences associated with a newly approved drug or biological product. Therefore, FDA is using one report for purposes of this information collection. These reports are required under 21 CFR parts 310, 314, and 600. Any burdens associated with these requirements will be reported under the adverse experience reporting (AER) information collection requirements. The estimated hours for postmarketing reports range from 1 to 5 hours based on previous estimates for adverse experience reporting; however FDA is estimating 5 hours for the purpose of this information collection.

The majority of the burden for developing the patient labeling is included under the reporting requirements, therefore, minimal burden is calculated for providing the guide to patients. As discussed previously, no burden can be calculated at this time for the number of AER reports that may be submitted after approval of a new drug or biologic, therefore, the number of records that may be maintained also cannot be determined. Any burdens associated with these requirements will be reported under the AER information collection requirements. The estimated recordkeeping burden of 1 hour is based on previous estimates for the recordkeeping requirements associated with the AER system.

XII. Request for Comments

Interested persons may, on or before December 20, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 314

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

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

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 314 and 601 be amended as follows:

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

1. The authority citation for 21 CFR part 314 continues to read as follows:

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

2. Subpart I, consisting of §§ 314.600 through 314.650, is added to read as follows:

Subpart I—Approval of New Drugs for Use Against Lethal or Permanently Disabling Toxic Substances When Efficacy Studies in Humans Ethically Cannot Be Conducted

Sec.
314.600 Scope.
314.610 Approval based on evidence of efficacy from studies in animals.
314.620 Withdrawal procedures.
314.630 Postmarketing safety reporting.
314.640 Promotional materials.
314.650 Termination of requirements.

Subpart I—Approval of New Drugs for Use Against Lethal or Permanently Disabling Toxic Substances When Efficacy Studies in Humans Ethically Cannot Be Conducted

§ 314.600 Scope.

This subpart applies to certain new drug products that have been studied for their safety and efficacy in ameliorating or preventing serious or life-threatening conditions caused by exposure to lethal or permanently disabling toxic biological, chemical, radiological, or nuclear substances, where the products would be expected to provide

meaningful therapeutic benefits to patients over existing treatments (e.g., ability to treat a condition that has no current therapy, ability to treat patients unresponsive to, or intolerant of, available therapy, or ability to improve patient response compared to available therapy). This subpart applies only to those new drug products for which: Definitive human efficacy studies cannot be conducted because it would be unethical to deliberately expose healthy human volunteers to a lethal or permanently disabling toxic biological, chemical, radiological, or nuclear substance without a proven treatment; and field trials to study the product's efficacy after an accidental or hostile exposure are not feasible. This subpart does not apply to products that can be approved based on standards described elsewhere in FDA's regulations (e.g., accelerated approval based on surrogate markers or clinical endpoints other than survival or irreversible morbidity), nor does it address the safety evaluation for these products.

§ 314.610 Approval based on evidence of efficacy from studies in animals.

FDA may grant marketing approval for a new drug product for which safety has been established and for which the requirements of § 314.600 are met based on adequate and well-controlled animal trials when the results of those animal studies establish that the drug product is reasonably likely to predict clinical benefit in humans. FDA will rely on the evidence from studies in animals only where: There is a reasonably well-understood pathophysiological mechanism of the toxicity of the substance and its prevention or substantial reduction by the product; the effect is independently substantiated in multiple animal species, including species expected to react with a response predictive for humans; the animal study endpoint is clearly related to the desired benefit in humans, generally the enhancement of survival or prevention of major morbidity; and the data or information on the kinetics and pharmacodynamics of the product or other relevant data or information, in animals and humans, allows selection of an effective dose in humans. Approval under this subpart will be subject to three requirements:

(a) *Postmarketing studies*. The applicant shall conduct postmarketing studies to verify and describe the drug's clinical benefit when such studies are feasible and ethical. Such postmarketing studies may not be feasible until an exigency arises that necessitates use of the product. When such studies are feasible, the applicant shall conduct such studies with due diligence.

(b) *Approval with restrictions to assure safe use*. If FDA concludes that a drug product shown to be effective under this subpart can be safely used only if distribution or use is restricted, FDA will require such postmarketing restrictions as are needed to assure safe use of the drug product, commensurate with the specific safety concerns presented by the drug product, such as:

(1) Distribution restricted to certain facilities or health care practitioners with special training or experience;

(2) Distribution conditioned on the performance of specified medical procedures, including medical followup; and

(3) Distribution conditioned on specified recordkeeping requirements.

(c) *Information to be provided to patients and potential patients; unit of use packaging*. For drug products approved under this subpart, applicants shall prepare, as part of their proposed labeling, labeling to be provided to patients or potential patients. The patient labeling will explain that the drug's approval was based on efficacy studies conducted in animals alone, give the drug's indication(s), directions for use (dosage and administration), contraindications, a description of any reasonably foreseeable risks, adverse reactions, anticipated benefits, drug interactions, and any other relevant information required by FDA at the time of approval. For self-administered drug products, there shall be unit-of-use packaging and attached patient labeling containing this information. For drug products administered by health professionals, the patient labeling shall be available with the product to be provided to patients prior to administration of the drug product, if possible.

§ 314.620 Withdrawal procedures.

(a) For new drugs approved under this subpart, FDA may withdraw approval, following a hearing as provided in part 15 of this chapter, as modified by this section, if:

(1) A postmarketing clinical study fails to verify clinical benefit;

(2) The applicant fails to perform the postmarketing study with due diligence;

(3) Use after marketing demonstrates that postmarketing restrictions are inadequate to assure safe use of the drug product;

(4) The applicant fails to adhere to the postmarketing restrictions applied at the time of approval under this subpart;

(5) The promotional materials are false or misleading; or

(6) Other evidence demonstrates that the drug product is not shown to be safe or effective under its conditions of use.

(b) *Notice of opportunity for a hearing*. The Director of the Center for Drug Evaluation and Research (CDER) will give the applicant notice of an opportunity for a hearing on CDER's proposal to withdraw the approval of an application approved under this subpart. The notice, which will ordinarily be a letter, will state generally the reasons for the action and the proposed grounds for the order.

(c) *Submission of data and information*. (1) If the applicant fails to file a written request for a hearing within 15 days of receipt of the notice, the applicant waives the opportunity for a hearing.

(2) If the applicant files a timely request for a hearing, the agency will publish a notice of hearing in the **Federal Register** in accordance with §§ 12.32(e) and 15.20 of this chapter.

(3) An applicant who requests a hearing under this section must, within 30 days of receipt of the notice of opportunity for a hearing, submit the data and information upon which the applicant intends to rely at the hearing.

(d) *Separation of function*. Separation of functions (as specified in § 10.55 of this chapter) will not apply at any point in withdrawal proceedings under this section.

(e) *Procedures for hearings*. Hearings held under this section will be conducted in accordance with the provisions of part 15 of this chapter, with the following modifications:

(1) An advisory committee duly constituted under part 14 of this chapter will be present at the hearing. The committee will be asked to review the issues involved and to provide advice and recommendations to the Commissioner of Food and Drugs.

(2) The presiding officer, the advisory committee members, up to three representatives of the applicant, and up to three representatives of CDER may question any person during or at the conclusion of the person's presentation. No other person attending the hearing may question a person making a presentation. The presiding officer may, as a matter of discretion, permit questions to be submitted to the presiding officer for response by a person making a presentation.

(f) *Judicial review*. The Commissioner of Food and Drugs' decision constitutes final agency action from which the applicant may petition for judicial review. Before requesting an order from a court for a stay of action pending review, an applicant must first submit a

petition for a stay of action under § 10.35 of this chapter.

§ 314.630 Postmarketing safety reporting.

Drug products approved under this subpart are subject to the postmarketing recordkeeping and safety reporting applicable to all approved drug products, as provided in §§ 314.80 and 314.81.

§ 314.640 Promotional materials.

For drug products being considered for approval under this subpart, unless otherwise informed by the agency, applicants shall submit to the agency for consideration during the preapproval review period copies of all promotional materials, including promotional labeling as well as advertisements, intended for dissemination or publication within 120 days following marketing approval. After 120 days following marketing approval, unless otherwise informed by the agency, the applicant shall submit promotional materials at least 30 days prior to the intended time of initial dissemination of the labeling or initial publication of the advertisement.

§ 314.650 Termination of requirements.

If FDA determines after approval under this subpart that the requirements established in §§ 314.610(b), 314.620, and 314.630 are no longer necessary for the safe and effective use of a drug product, it will so notify the applicant. Ordinarily, for drug products approved under § 314.610, these requirements will no longer apply when FDA determines that the postmarketing study verifies and describes the drug product's clinical benefit. For drug products approved under § 314.610, the restrictions would no longer apply when FDA determines that safe use of the drug product can be assured through appropriate labeling. FDA also retains the discretion to remove specific postapproval requirements upon review of a petition submitted by the sponsor in accordance with § 10.30 of this chapter.

PART 601—LICENSING

3. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263; sec. 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

4. Subpart G, consisting of §§ 601.60 through 601.65, is added to read as follows:

Subpart G—Approval of Biological Products for Use Against Lethal or Permanently Disabling Toxic Substances When Efficacy Studies in Humans Ethically Cannot Be Conducted

Sec.

601.60 Scope.
601.61 Approval based on evidence of efficacy from studies in animals.
601.62 Withdrawal procedures.
601.63 Postmarketing safety reporting.
601.64 Promotional materials.
601.65 Termination of requirements.

Subpart G—Approval of Biological Products for Use Against Lethal or Permanently Disabling Toxic Substances when Efficacy Studies in Humans Ethically Cannot Be Conducted

§ 601.60 Scope.

This subpart applies to certain biological products that have been studied for their safety and efficacy in ameliorating or preventing serious or life-threatening conditions caused by exposure to lethal or permanently disabling toxic biological, chemical, radiological, or nuclear substances, where the products would be expected to provide meaningful therapeutic benefits to patients over existing treatments (e.g., ability to treat a condition that has no current therapy, ability to treat patients unresponsive to, or intolerant of, available therapy, or ability to improve patient response compared to available therapy). This subpart applies only to those biological products for which: Definitive human efficacy studies cannot be conducted because it would be unethical to deliberately expose healthy human volunteers to a lethal or permanently disabling toxic biological, chemical, radiological, or nuclear substance without a proven treatment; and field trials to study the product's efficacy after an accidental or hostile exposure are not feasible. This subpart does not apply to products that can be approved based on standards described elsewhere in FDA's regulations (e.g., accelerated approval based on surrogate markers or clinical endpoints other than survival or irreversible morbidity), nor does it address the safety evaluation for these products.

§ 601.61 Approval based on evidence of efficacy from studies in animals.

FDA may grant marketing approval for a biological product for which safety has been established and for which the requirements of § 601.60 are met based on adequate and well-controlled animal trials when the results of those animal studies establish that the biological product is reasonably likely to predict clinical benefit in humans. FDA will rely on the evidence from studies in animals only where: There is a reasonably well-understood pathophysiological mechanism of the toxicity of the substance and its prevention or substantial reduction by the product; the effect is independently substantiated in multiple animal species, including species expected to react with a response predictive for humans; the animal study endpoint is clearly related to the desired benefit in humans, generally the enhancement of survival or prevention of major morbidity; and the data or information on the kinetics and pharmacodynamics of the product or other relevant data or information, in animals and humans, allows selection of an effective dose in humans. Approval under this subpart will be subject to three requirements:

(a) *Postmarketing studies.* The applicant shall conduct postmarketing studies to verify and describe the biological product's clinical benefit when such studies are feasible and ethical. Such postmarketing studies may not be feasible until an exigency arises that necessitates use of the product. When such studies are feasible, the applicant shall conduct such studies with due diligence.

(b) *Approval with restrictions to assure safe use.* If FDA concludes that a biological product shown to be effective under this subpart can be safely used only if distribution or use is restricted, FDA will require such postmarketing restrictions as are needed to assure safe use of the biological product, commensurate with the specific safety concerns presented by the biological product, such as:

(1) Distribution restricted to certain facilities or health care practitioners with special training or experience;

(2) Distribution conditioned on the performance of specified medical procedures, including medical followup; and

(3) Distribution conditioned on specified recordkeeping requirements.

(c) *Information to be provided to patients and potential patients; unit of use packaging.* For biological products approved under this subpart, applicants shall prepare, as part of their proposed labeling, labeling to be provided to patients or potential patients. The patient labeling will explain that the biological product's approval was based on efficacy studies conducted in animals alone, give the biological product's indication(s), directions for use (dosage and administration), contraindications, a description of any

reasonably foreseeable risks, adverse reactions, anticipated benefits, drug interactions, and any other relevant information required by FDA at the time of approval. For self-administered biological products, there shall be unit-of-use packaging and attached patient labeling containing this information. For biological products administered by health professionals, the patient labeling shall be available with the product to be provided to patients prior to administration of the biological product, if possible.

§ 601.62 Withdrawal procedures.

(a) For biological products approved under this subpart, FDA may withdraw approval, following a hearing as provided in part 15 of this chapter, as modified by this section, if:

(1) A postmarketing clinical study fails to verify clinical benefit;

(2) The applicant fails to perform the postmarketing study with due diligence;

(3) Use after marketing demonstrates that postmarketing restrictions are inadequate to assure safe use of the biological product;

(4) The applicant fails to adhere to the postmarketing restrictions applied at the time of approval under this subpart;

(5) The promotional materials are false or misleading; or

(6) Other evidence demonstrates that the biological product is not shown to be safe or effective under its conditions of use.

(b) *Notice of opportunity for a hearing.* The Director of the Center for Biologics Evaluation and Research (CBER) will give the applicant notice of an opportunity for a hearing on the CBER's proposal to withdraw the approval of an application approved under this subpart. The notice, which will ordinarily be a letter, will state generally the reasons for the action and the proposed grounds for the order.

(c) *Submission of data and information.* (1) If the applicant fails to file a written request for a hearing within 15 days of receipt of the notice, the applicant waives the opportunity for a hearing.

(2) If the applicant files a timely request for a hearing, the agency will publish a notice of hearing in the **Federal Register** in accordance with §§ 12.32(e) and 15.20 of this chapter.

(3) An applicant who requests a hearing under this section must, within 30 days of receipt of the notice of opportunity for a hearing, submit the data and information upon which the applicant intends to rely at the hearing.

(d) *Separation of function.* Separation of functions (as specified in § 10.55 of this chapter) will not apply at any point in withdrawal proceedings under this section.

(e) *Procedures for hearings.* Hearings held under this section will be conducted in accordance with the provisions of part 15 of this chapter, with the following modifications:

(1) An advisory committee duly constituted under part 14 of this chapter will be present at the hearing. The committee will be asked to review the issues involved and to provide advice and recommendations to the Commissioner of Food and Drugs.

(2) The presiding officer, the advisory committee members, up to three representatives of the applicant, and up to three representatives of CBER may question any person during or at the conclusion of the person's presentation. No other person attending the hearing may question a person making a presentation. The presiding officer may, as a matter of discretion, permit questions to be submitted to the presiding officer for response by a person making a presentation.

(f) *Judicial review.* The Commissioner of Food and Drugs' decision constitutes final agency action from which the applicant may petition for judicial review. Before requesting an order from a court for a stay of action pending review, an applicant must first submit a petition for a stay of action under § 10.35 of this chapter.

§ 601.63 Postmarketing safety reporting.

Biological products approved under this subpart are subject to the postmarketing recordkeeping and safety reporting applicable to all approved biological products.

§ 601.64 Promotional materials.

For biological products being considered for approval under this subpart, unless otherwise informed by the agency, applicants shall submit to the agency for consideration during the preapproval review period copies of all promotional materials, including promotional labeling as well as advertisements, intended for dissemination or publication within 120 days following marketing approval. After 120 days following marketing approval, unless otherwise informed by the agency, the applicant shall submit promotional materials at least 30 days prior to the intended time of initial dissemination of the labeling or initial publication of the advertisement.

§ 601.65 Termination of requirements.

If FDA determines after approval under this subpart that the requirements established in §§ 601.61(b), 601.62, and 601.63 are no longer necessary for the safe and effective use of a biological product, it will so notify the applicant. Ordinarily, for biological products approved under § 601.61, these requirements will no longer apply when FDA determines that the postmarketing study verifies and describes the biological product's clinical benefit. For biological products approved under § 601.61, the restrictions would no longer apply when FDA determines that safe use of the biological product can be assured through appropriate labeling. FDA also retains the discretion to remove specific postapproval requirements upon review of a petition submitted by the sponsor in accordance with § 10.30 of this chapter.

Dated: May 25, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 99–25377 Filed 10–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 20

46 CFR Part 5

[USCG–1998–3472]

RIN 2115–AF59

Rules of Practice, Procedure, and Evidence for Administrative Proceedings of the Coast Guard

AGENCY: Coast Guard, DOT.

ACTION: Reopening of comment period on interim rule.

SUMMARY: The Coast Guard is reopening the period for public comment on its interim rule, Rules of Practice, Procedure, and Evidence for Administrative Proceedings of the Coast Guard. Because of several requests for extension, the Coast Guard is reopening the period for 180 days.

DATES: Comments must reach the Coast Guard on or before April 3, 2000.

ADDRESSES: Please submit your comments and related material by any one of the following methods (but by only one, to avoid multiple listings in the public docket):

(1) By mail to the Docket Management Facility, [USCG–1998–3472], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400

Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on the substance of the rulemaking, call George J. Jordan, Attorney-Adviser, Office of the Chief Administrative Law Judge, telephone 202–267–0006. For questions on viewing or submitting material to the docket, call Ms. Dorothy Walker, Chief of Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The interim rule, published on May 24, 1999 [64 FR 28054], encouraged interested persons to participate in this rulemaking by submitting written data, views, or arguments by July 23, 1999. This request does the same, except that it invites their submitting them by April 3, 2000.

Persons submitting comments should include their names and addresses, identify this docket [USCG–1998–3472] and the specific section of the interim rule to which each comment applies, and give the reason for each comment. Please submit one copy of each comment and attachment in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing, to the DOT Docket Management Facility at the address under **ADDRESSES.** If you want acknowledgment of receipt of your comment, enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this interim rule in view of them.

The Coast Guard plans no public meeting. Persons may request one by writing to the Docket Management Facility at the address under **ADDRESSES.** The request must identify this docket [USCG–1998–3472] and should include the reasons why an opportunity for oral presentations would be helpful to this rulemaking. If such an opportunity would help the rulemaking, the Coast Guard will hold a public meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard seeks to improve its adjudicative process. Improvement will also affect certain actions involving merchant mariners. First, the interim rule consolidates all Coast Guard adjudicative procedures to include the following: the suspension and revocation (S&R) of merchant mariners' licenses, certificates of registry, and documents and the procedures involving class II civil penalties. Second, the interim rule eliminates unnecessary procedures from S&R proceedings. The Coast Guard expects the interim rule to facilitate the efficient use of administrative resources relating to adjudication by the Coast Guard. It will save time, effort, and money for all parties who are or may become involved in actions of the Coast Guard.

Dated: September 27, 1999.

Robert S. Horowitz,

Acting Chief Counsel.

[FR Doc. 99–25865 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 175

[USCG–1999–6219]

Recreational Boating Safety—Federal Requirements for Wearing Personal Flotation Devices

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for comments.

SUMMARY: The Coast Guard seeks (we seek) comments from interested people, groups, and businesses about the need for, and possible alternatives to, Federal requirements or incentives for people to wear lifejackets while engaged in a limited number of specific boating activities on the water. We will consider all comments and consult further with the National Boating Safety Advisory Council (NBSAC) to determine whether we should propose any Federal rules that would help to reduce the number of recreational boaters who drown in the circumstances identified by this notice and by the comments to it.

DATES: Comments and related material must reach the Docket Management Facility on or before April 3, 2000.

ADDRESSES: To make sure your comments and related material (referred to USCG–1999–6219) are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street S.W., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Carlton Perry, Project Manager, Office of Boating Safety, by telephone at 202–267–0979 or by e-mail at *cperry@comdt.uscg.mil.* For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647, or read it on the Internet at the Web Site for the Office of Boating Safety at http://www.uscgboating.org or at http://dms.dot.gov.

SUPPLEMENTARY INFORMATION:

Regulatory History

On September 25, 1997, we published in the **Federal Register** a notice of request for comments [62 FR 50280]. That notice, with the title ''Recreational Boating Safety—Federal Requirements for Wearing Personal Flotation Devices'', under docket number CGD 97–059, set the closing date for comments for February 2, 1998. On March 20, 1998, we published a second notice [63 FR 13586]. That notice, with the same title and under the same docket number, reopened the comment period until May 29, 1998.

Background and Purpose

A number of responses to the initial notice commented that the best way to prevent drowning was to keep people from falling into the water in the first place. Our review of data on recreational boating accidents indicates

that most people who drowned had ended up in the water unexpectedly and were not able to put on lifejackets during the incidents. Federal requirements to prevent unexpected falls overboard would unreasonably restrict moving about on the vessel and would also likely interfere with operating the vessel. We believe that the best way to minimize the number of deaths due to drowning is to maximize the number of recreational boaters wearing lifejackets, also known as personal flotation devices (PFDs). Each year we sponsor a national campaign for boating safety based on educational methods aimed at encouraging recreational boaters to wear lifejackets. We also recognize, however, that these nonregulatory methods of modifying behavior have not been successful enough.

When we published the initial notice, we sought public comment on the need for Federal requirements that any or all recreational boaters wear lifejackets. The request asked the public to identify the various conditions under which the use of lifejackets should be mandatory or optional, or would be inappropriate.

We received over 600 written comments in response to the initial notice. Most of them opposed any Federal requirements that all boaters wear lifejackets all the time. However, almost 120 of them supported Federal or State PFD requirements for at least some categories of recreational vessels, boaters, or activities.

After summarizing the comments (copy in the public docket for this notice), we consulted with NBSAC at its meetings in October 1998 and April 1999 regarding the results. The Council recommended that we publish another notice of request for comments, one that would focus more on the need to propose rules calling for mandatory wear for children, for operators of Personal Watercraft (PWC), and for people being towed behind recreational vessels.

We have considered the recommendations of NBSAC (also in the public docket for this notice), the comments we received in response to the initial notice, and drowning statistics from reports on recreational boating accidents. In this notice, we are again inviting comments from the public, but only targeting vessels less than 16 feet in length, which should include specific groups of high-risk recreational vessels, boaters, and activities.

Recreational boating has grown dramatically over the last 20 years. Over those years, there have been fewer and fewer deaths, thanks in part to ongoing educational efforts like the Federal and State Recreational Boating Safety Programs. Unfortunately, recreational boating accidents still result in more deaths than all other transportation-related accidents, except for motor vehicle accidents.

Most people who die in recreational boating accidents drown. During 1997, our data show, recreational boating accidents resulted in over 800 deaths, 588 of them by drowning. Of the 588 victims, most (523) were not wearing lifejackets. Although 65 victims also drowned while wearing them, information in the accident reports suggest that other factors contributed to or even were the primary cause of death for most of these 65. Many of the 588 might have survived if they had worn lifejackets.

During 1997, vessels less than 16 feet in length accounted for 385 deaths, 293 by drowning, and vessels at least 16 feet in length, but less than 26 feet in length, accounted for 294 deaths, 192 by drowning. Also, during 1997, open motorboats accounted for 413 deaths, 307 by drowning, and PWC accounted for another 84 deaths, 22 by drowning. Sadly, during 1997, 25 children 12 years of age and under died in the water, 14 by drowning.

Request for Comments

We encourage you to participate in this project by submitting comments and related material about the need for, or alternatives to, Federal requirements and incentives for recreational boaters to wear lifejackets under the specific circumstances listed in this notice. We emphasize that we are not contemplating such requirements or incentives for commercial vessels, for larger recreational vessels, or for all recreational boaters under all circumstances. We encourage you to answer all of the following questions. We even encourage you to provide information on any subject related to those questions if you feel your comment addresses an issue we need to consider. We also solicit comments from all segments of the recreational boating community, from State boating safety authorities, from NBSAC, from the National Association of State Boating Law Administrators (NASBLA), and from other interested people, groups, and businesses, large or small, on the economic or other effects of any such requirements or incentives.

If you submit comments, please include your name and address, identify the docket number for this notice (USCG–1999–6219), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will summarize all the comments we receive during the comment period, place a copy of the summary in the public docket, and provide copies to the members of NBSAC for them to consider at their next meeting. We will consider all relevant comments and material received during the comment period in drafting any regulatory or nonregulatory measures that may follow from this notice.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this project, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Please consider and respond to the following questions:

1. Several States have imposed various requirements for wearing lifejackets—by children, during water-skiing, aboard PWC, canoes and kayaks, and sailboards, and so on. Should we continue to let individual States determine their own requirements for wearing lifejackets? Or should we propose Federal rules to—

a. Ensure that, if States do issue requirements for wearing lifejackets, those requirements be consistent with one another?

b. Preempt the several States from issuing any such requirements at all?

c. Apply only on those navigable waters where no State has issued requirements for wearing lifejackets?

2. Should we propose Federal rules requiring that any or all of the following recreational boaters wear lifejackets while underway? If so, which?

a. Any child under 13 years of age, or under some other age?

b. Any boater on a recreational vessel less than 16 feet in length, less than 20 feet in length, or some other length?

c. Any boater on a specific type of recreational vessel, such as an open motorboat, a PWC, a sailboat, a

sailboard, a rowboat, a canoe, or a kayak?

d. Any person being towed behind a recreational vessel on water skis, on an inflatable raft or tube, or on some other device?

e. Any boater who is the sole occupant of a recreational vessel? If so, should the rule not apply when a vessel capable of rendering assistance accompanies the first vessel?

f. Any boater on a recreational vessel operating either in certain water or weather—such as fast currents, white water, high tides, cold weather, or gale-force winds—or where the recreational vessel is, or could drift to, more than a given distance from land.

g. Any boater on a recreational vessel defined by a specific combination of the boater's age, the vessel's type and size, its operation, and the prevailing water or weather?

3. Should we propose any Federal rules that allow alternatives to wearing Coast Guard approved lifejackets? If so, which alternatives? And if so, for which vessels, activities, water or weather, or boaters?

4. Please describe any nonregulatory ways to reduce the number of deaths by drowning, that are achievable at lower cost or with less burden than by Federal rules for wearing lifejackets.

Dated: September 28, 1999.

Terry M. Cross,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Operations.

[FR Doc. 99–25864 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA083–0182; FRL–6452–2]

Clean Air Act Approval and Promulgation of New Source Review Implementation Plan for El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes three actions on rules submitted by El Dorado Air Pollution Control District (District or EDCAPCD) for the purpose of meeting requirements of the Clean Air Act, as amended in 1990 (CAA or Act), with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS). First, EPA proposes to approve the following rules into State Implementation Plan (SIP): Rule 501, General Permit Requirements; Rule 520, Enhanced Monitoring and Compliance Certification; Rule 524, Emission Reduction Credits; and Rule 525, Priority Reserve. Second, EPA proposes a limited approval and limited disapproval of Rule 523, New Source Review. Finally, EPA proposes to rescind from the SIP 36 District rules that will be replaced by the rules mentioned above. All of these rules were submitted by the State of California on behalf of the District as a requested SIP revision to satisfy certain federal requirements for an approvable NSR SIP.

DATES: EPA is requesting comments on all aspects of the requested SIP revision and EPA's proposed rulemaking action. Comments on this proposed action must be received in writing by November 4, 1999.

ADDRESSES: To submit comments or receive further information, please contact Roger Kohn, Environmental Protection Specialist, Permits Office, Air Division (AIR–3), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: (1) EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105; (2) California Air Resources Board, 2020 L Street, Sacramento, CA 95814; (3) El Dorado County Air Pollution Control District, 2850 Fairlane Ct., Bldg. C, Placerville, CA 95667–4100. A courtesy copy of these rules may be available via the Internet at http://arbis.arb.ca.gov/drdb/ed/cur.htm. These versions of the District rules, however, may be different from the versions submitted to EPA for approval. Readers are cautioned to verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval. The official submittals are available only at the three addresses listed above.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, Permits Office, (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1238 E-mail: kohn.roger@epa.gov

SUPPLEMENTARY INFORMATION:

I. What Action is EPA Proposing?
A. Today's Proposed Actions
B. Limited Approval and Limited Disapproval of Rule 523
C. Full Approval of Rules 501, 520, 524, and 525
D. Recission of 36 Rules
E. 1982 NSR SIP Conditional Approval
II. Rule 523 Deficiencies
A. Offset Ratio for Severe Ozone Nonattainment Area
B. Offsetting Total Emissions
C. Incomplete BACT Definition
D. Exemption for Regulatory Compliance
E. Interpollutant Trading
III. How Did EPA Arrive at the Proposed Action?
IV. Administrative Requirements
A. Executive Order 12866
B. Executive Order 12875
C. Executive Order 13045
D. Executive Order 13084
E. Regulatory Flexibility Act
F. Unfunded Mandates

I. What Action is EPA Proposing?

A. Today's Proposed Actions

EPA's proposed actions on NSR rules submitted by the District are summarized in Tables 1, 2, and 3 below.

TABLE 1.—EPA PROPOSES APPROVAL

Rule No.	Rule title
501	General Permit Requirements.
520	Enhanced Monitoring and Compliance Certification.
524	Emission Reduction Credits.
525	Priority Reserve.

TABLE 2.—EPA PROPOSES LIMITED APPROVAL AND LIMITED DISAPPROVAL

Rule No.	Rule title
523	New Source Review.

TABLE 3.—EPA PROPOSES RESCISSION FROM SIP

Rule No	Rule title
401 through 407. 410, 411 415, 416 418 through 425 501 through 508 510 through 513 515 517 through 519 521	Various—refer to TSD.

B. Limited Approval and Limited Disapproval of Rule 523

EPA is proposing limited approval and limited disapproval of El Dorado County Air Pollution Control District (EDCAPCD) Rule 523, New Source Review into the California SIP. This rule consists of definitions and standards, including applicability, major source and major modification definitions, offsets, and Best Available Control Technology. EPA is proposing simultaneous limited approval and limited disapproval of this rule because, while it strengthens the SIP, it also does not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. The deficiencies that are the basis for our action are identified in section II below. A detailed discussion of the rule deficiencies is included in the Technical Support Document (TSD) for this rulemaking.

If our final action remains a limited approval and limited disapproval, the action would constitute a disapproval under section 179(a)(2) of the Act (see 57 FR 13566–13567). As provided under section 179(a) of the Act, the District would have up to 18 months after a final SIP disapproval to correct the deficiencies that are the subject of the disapproval before EPA is required to impose sanctions. If the District does not correct its SIP deficiencies within 18 months, then section 179(a)(4) requires the immediate application of sanctions. According to section 179(b), sanctions can take the form of a loss of highway funds or a two to one emissions offset ratio. Once the Administrator applies one of the section 179(b) sanctions, the State will then have an additional six months to correct any deficiencies. Section 179(a)(4) requires that both highway and offsets sanctions must be applied if any deficiencies are still not corrected after the additional six month period.

In addition, a final disapproval would trigger section 110(c) provisions for federal implementation plans. Section 110(c) requires EPA to promulgate a federal implementation plan within two years of disapproving a state implementation plan submittal in whole or in part.

C. Full Approval of Rules 501, 520, 524, and 525

EPA is proposing to approve rules 501, 520, 524, and 525 into the California SIP. Rule 501, General Permit Requirements, contains procedures for the review of new stationary sources of air pollution and the modification and operation of existing sources through the issuance of permits. In addition to these substantive requirements, the rule also contains twelve definitions and twelve exemptions. EPA has reviewed the submitted rule for consistency with applicable requirements of the Act. The standards and definitions in the rule are consistent with the CAA and EPA regulations, and the rule does not exempt any stationary sources that are subject to federal review under the Act. Therefore, EPA proposes to approve Rule 501 into the SIP.

Rule 501 contains a provision that states that an Authority to Construct (ATC) permit ''shall remain in effect until a permit to operate the equipment is granted or denied or the application is cancelled.'' The expiration of ATC permits upon issuance of permits to operate (PTO) appears to conflict with EPA policy, which requires that terms and conditions of ATCs remain in effect for the life of a facility. While the EDCAPCD provision is not the approach favored by EPA, we believe the District's rule is approvable because PTOs will contain the same permanent, enforceable conditions that were in the ATCs. EPA interprets the rule to mean that when a PTO is issued, all substantive terms and conditions of the ATC permit must be incorporated into the PTO. This includes, but is not limited to, emission limits, and all monitoring, record-keeping, and reporting necessary to verify compliance.

Since EPA views ATC terms and conditions as federally enforceable (see section 113(b)(1) of the CAA and 40 CFR 52.23), these conditions remain federally enforceable when they are incorporated into the PTO.

Rule 520, Enhanced Monitoring and Compliance Certification, provides standards by which compliance with CAA requirements can be determined. The rule allows the use of any credible evidence, including but not limited to EPA or EPA-approved reference test methods, compliance assurance monitoring pursuant to 40 CFR part 64, and periodic monitoring associated with part 70 federal operating permits, to be used to demonstrate compliance with federally enforceable permit conditions. This rule contains language recommended by EPA in a May 16, 1994 SIP-call. Since the rule submittal was responsive to the SIP-call and satisfies the requirements of sections 110, 113, and 114 of the CAA, EPA proposes approval into the SIP.

Rule 524, Emission Reduction Credits, allows the District to quantify, adjust, and certify surplus emission reductions for later use as offsets. This rule relates to new source review because these credits can be obtained by new sources and used as offsets. Rule 524 satisfies EPA criteria that all emission reductions used as offsets be real, surplus, quantifiable, enforceable and permanent.

Rule 525, Priority Reserve, is a mechanism to provide loans of emission reductions for essential public services (publicly owned and operated sources such as sewage treatment plants). The rule requires, pursuant to Rule 524 (Emission Reduction Credits), that all offsets in the Priority Reserve bank be real, enforceable, quantifiable, and permanent. Therefore Rule 525 is consistent with CAA requirements and EPA policy and EPA proposes approval into the SIP.

D. Recission of 36 Rules

On April 26, 1994, EDCAPCD repealed 43 rules and adopted four new rules to replace them. Thirty-six of the repealed rules remained federally enforceable because they are still in the El Dorado County SIP. In its May 24, 1994 submittal to EPA, the California Air Resources Board (CARB) requested that EPA rescind the repealed rules from the SIP. The repealed rules, which are no longer enforced by the District, constituted EDCAPCD's stationary source permitting program at the time they were approved into the SIP in 1982 and 1983. After the 1990 CAA amendments, however, the District substantially revised its rules to include the substantive nonattainment new source review requirements mandated by the 1990 amendments. The rules that EPA is proposing to rescind from the SIP have been replaced by the more stringent rules proposed for approval and limited approval today. Thus, EPA has determined that the recission of the 36 repealed rules is approvable because they are being replaced in the SIP by more stringent rules that satisfy requirements mandated by the 1990 amendments. A summary document that shows how the repealed rules correspond to the more stringent rules that supercede them is included in the docket for this rulemaking.

E. 1982 NSR SIP Conditional Approval

In a 1982 final rulemaking action (47 FR 29536, July 7, 1982), EPA conditionally approved the nonattainment area plan (NAP) for the Mountain Counties Air Basin, which includes El Dorado County. As a result of that action, 40 CFR 52.232 was amended to require El Dorado County to revise its NSR rules by October 30, 1985 in order to correct deficiencies identified at the time. Today, we propose to delete from 40 CFR part 52

the requirement that the District correct NSR rule deficiencies identified when EPA finalized the District's NSR rules in 1982 for the following reasons:

- The current rules will, upon final approval, supercede the rules submitted in 1981.
- EPA has not taken action on any revisions to EDCAPCD NSR rules.
- EPA has not done a final rulemaking to correct the deficiencies of EDCAPCD NSR rules discussed in the July 7, 1982 final rulemaking.
- The District has revised and submitted new NSR rules to comply with the 1990 CAA amendments.

II. Rule 523 Deficiencies

A. Offset Ratio for Severe Ozone Nonattainment Area

Section 523.3.C: This section allows an offset ratio of 1.2 to 1.0 for nonattainment pollutants if the offset is located within a 15-mile radius and within the District. Most of El Dorado County was designated as severe nonattainment for ozone in 1995. Section 182(d)(2) of the CAA requires offset ratios of at least 1.3 to 1.0 for such areas, unless the SIP requires all existing major sources in the nonattainment area to apply Best Available Control Technology (BACT). Since the EDCAPCD SIP does not contain such a provision, the District must revise the ratio to comply with the CAA requirement.

B. Offsetting Total Emissions

Section 523.3.B: This section contains offset thresholds, and requires new or modified sources to offset emissions that exceed these thresholds. Section 173(c)(1) of the CAA requires that the total tonnage of increased emissions be offset, not just the amount of emissions that exceed the threshold. Accordingly, the District must revise the rule to satisfy this federal requirement. The District could do this by either revising the rule to require that all new and modified sources that exceed federal offset thresholds offset down to zero, or by tracking offsets and demonstrating on an on-going basis that the implementation of Rule 523 creates a quantity of offsets that meets or exceeds CAA requirements.

C. Incomplete BACT Definition

Section 523.2.G: The definition of BACT in this section does not include the most stringent emissions limitation ''which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable.'' (40 CFR 51.165(a)(xiii)) This provision must be added to the definition.

D. Exemption for Regulatory Compliance

Section 523.1.G: This section allows an exemption from NSR for modifications that are necessary to comply with District prohibitory rules. This exemption for regulatory compliance, as written, is not allowed by the Clean Air Act. This provision must be either deleted or revised to be consistent with EPA policy that allows exemptions for pollution control projects if certain substantive and procedural criteria are satisfied. (The policy is described in a July 1, 1994 memorandum entitled ''Pollution Control Projects and New Source Review (NSR) Applicability'', included in the docket for this rulemaking.) Under this policy, the District could exempt such projects, provided that they are environmentally beneficial and do not cause or contribute to a violation of a national ambient air quality standard, or PSD increment, or adversely affect an air quality related value in a Class 1 area.

E. Interpollutant Trading

Section 523.3.D: This section allows interpollutant offsets (trading among different precursors to the same secondary pollutant), and must either be removed or revised. There are no provisions addressing interpollutant trading in the CAA or EPA regulations. The CAA and EPA regulations provide only for trading (offsets) of the same pollutant. EPA has considered the approvability of interpollutant trading if certain criteria are met. If the District wishes to retain this provision, the District must revise the rule to require adequate modeling to determine the appropriate offset ratio, public notification, and EPA concurrence for all interpollutant trades.

III. How Did EPA Arrive at the Proposed Action?

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Clean Air Act. EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion.

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act provide that each implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of Section 110(a)(2).

Rules 501, 523, 524, and 525 were adopted by the District Board of Directors on April 26, 1994. On that date, the District also repealed 36 rules that are in the EDCAPCD SIP. The newly adopted rules, along with a request to rescind the repealed rules from the SIP, were subsequently submitted by CARB to EPA as proposed revisions to the California SIP on May 24, 1994. Rule 520 was adopted by the District on June 27, 1995, and submitted by CARB to EPA as a SIP revision on October 13, 1995. The submitted rules, which are new additions to the SIP, constitute the District's New Source Review permitting regulations.

Most of El Dorado County, except for that portion within the Lake Tahoe basin, is included in the Sacramento Metro Area, which is currently designated as severe nonattainment for ozone. For all other pollutants, the County is designated as attainment or unclassifiable with respect to the NAAQS. District NSR rules therefore apply to all new or modified stationary sources proposing to emit VOC or NOx in the nonattainment area. The nonattainment provisions must also apply to any source which would contribute to a violation of the NAAQS. The Clean Air Act requirements are found at sections 172 and 173 for nonattainment NSR permitting. With certain exceptions, described in section II above, the District's submittal satisfies these requirements. For a detailed description of how the submitted rule meets the applicable requirements, please refer to EPA's technical support document (TSD).

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, Regulatory Planning and Review.

B. Executive Order 12875

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

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

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

Accordingly, the requirements of section 3(b) of 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Carbon monoxide, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: September 17, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–25835 Filed 10–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL–6451–8]

Rhode Island: Determination of Adequacy for the State's Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to issue a determination of adequacy for the State

of Rhode Island's municipal solid waste landfill (MSWLF) permit program. Under the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments, States may develop and implement permit programs for MSWLFs for review and an adequacy determination by EPA. This proposed rule would document EPA's determination that Rhode Island's MSWLF permit program is adequate to ensure compliance with Federal MSWLF requirements.

DATES: Submit comments and requests for public hearing on or before November 4, 1999. See the **SUPPLEMENTARY INFORMATION** section for additional information.

ADDRESSES: Mail all comments and requests for public hearing concerning this proposed rule to Michael Hill, United States Environmental Protection Agency, Region 1, One Congress Street, Suite 1100, Mail Code CHW, Boston, MA 02114. Copies of Rhode Island's application for a determination of adequacy are available at the following locations for inspection and copying: (1) During the hours of 8:00 a.m. to 4:00 p.m., Rhode Island Department of Environmental Management, 235 Promenade Street, Providence, RI, Attn: Mr. Christopher Shafer, telephone number: (401) 222–2797, ext. 7511; and (2) during the hours of 8:00 a.m. to 5:00 p.m., United States Environmental Protection Agency, Region 1, One Congress Street, Suite 1100, Boston, MA 02203, Attn: Ellen Culhane, telephone number: (617) 918–1225.

FOR FURTHER INFORMATION CONTACT: Michael Hill, United States Environmental Protection Agency, Region 1, One Congress Street, Suite 1100, Mail Code CHW, Boston, MA 02114; telephone number: (617) 918–1398.

SUPPLEMENTARY INFORMATION:

I. Background

On October 9, 1991, the Environmental Protection Agency (EPA) promulgated the ''Solid Waste Disposal Facility Criteria: Final Rule'' (56 FR 50978, Oct. 9, 1991). That rule established Part 258 of Title 40 of the Code of Federal Regulations (CFR) (40 CFR part 258). The criteria set out in 40 CFR part 258 include location restrictions and standards for design, operation, groundwater monitoring, corrective action, financial assurance and closure and post-closure care for municipal solid waste landfills (MSWLFs). The 40 CFR part 258 criteria establish minimum Federal standards that take into account the practical capability of owners and operators of MSWLFs while ensuring that these facilities are designed and managed in a manner that is protective of human health and the environment.

Section 4005(c)(1)(B) of Subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, requires States to develop and implement permit programs to ensure that MSWLFs will comply with the 40 CFR part 258 criteria. RCRA Section 4005(c)(1)(C) requires EPA to determine whether the permit programs that States develop and implement for these facilities are adequate.

To fulfill this requirement to determine whether State permit programs that implement the 40 CFR part 258 criteria are adequate, EPA promulgated the State Implementation Rule (SIR) (63 FR 57025, Oct. 23, 1998). The SIR, which established Part 239 of Title 40 of the CFR (40 CFR part 239), has the following four purposes: (1) It spells out the requirements that State programs must satisfy to be determined adequate; (2) it confirms the process for EPA approval or partial approval of State permit programs for MSWLFs; (3) it provides the procedures for withdrawal of such approvals; and (4) it establishes a flexible framework for modifications of approved programs.

Only those owners and operators located in States with approved permit programs for MSWLFs can use the site-specific flexibility provided by 40 CFR part 258, to the extent the State permit program allows such flexibility. Every standard in the 40 CFR part 258 criteria is designed to be implemented by the owner or operator with or without oversight or participation by EPA or the State regulatory agency. States with approved programs may choose to require facilities to comply with the 40 CFR part 258 criteria exactly, or they may choose to allow owners and operators to use site-specific alternative approaches to meet the Federal criteria. The flexibility that an owner or operator may be allowed under an approved State program can provide a significant reduction in the burden associated with complying with the 40 CFR part 258 criteria. Regardless of the approval status of a State and the permit status of any facility, the 40 CFR part 258 criteria shall apply to all permitted and unpermitted MSWLFs.

To receive a determination of adequacy for a MSWLF permit program under the SIR, a State must have enforceable standards for new and existing MSWLFs. These State standards must be technically comparable to the 40 CFR part 258 criteria. In addition, the State must have the authority to issue a permit or other notice of prior approval and conditions to all new and existing MSWLFs in its jurisdiction. The State also must provide for public participation in permit issuance and enforcement, as required in RCRA Section 7004(b). Finally, the State must demonstrate that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved permit program. EPA expects States to meet all of these requirements for all elements of a permit program before it gives full approval to a State's program.

II. State of Rhode Island

On March 18, 1994, Rhode Island submitted a complete application for a determination of adequacy of its MSWLF permit program to EPA. EPA reviewed the application and requested additional information about program implementation. Rhode Island provided this information. As a result of the review process, Rhode Island identified certain deficiencies in its MSWLF permit program regulations, and it proposed revisions to make the program consistent with the Federal minimum criteria under 40 CFR part 258. On March 23, 1995, EPA provided Rhode Island with its comments regarding the application and acknowledged that Rhode Island had proposed to revise the MSWLF permit program regulations. Rhode Island provided EPA with these proposed revisions, subject to public comment, on August 28, 1995. On September 25, 1995, EPA informed Rhode Island that it had (1) completed its review of the proposed revisions, and (2) determined that upon their adoption as written, EPA would publish a tentative full determination of adequacy for the State's MSWLF permit program in the **Federal Register**. Before publication of this notice, however, Rhode Island further amended its MSWLF permit program regulations. It made these amendments in order to satisfy certain State law requirements and conform the regulations to certain Rhode Island Department of Environmental Management (RIDEM) recycling requirements, and because of a RIDEM reorganization. The revised MSWLF permit program regulations became effective on January 30, 1997. EPA reviewed these regulations and requested additional information about program implementation, which Rhode Island provided.

Based on its review, EPA has tentatively determined that all portions of Rhode Island's MSWLF permit

program meet all the requirements necessary to qualify for full program approval and ensure compliance with the 40 CFR part 258 criteria.

By finding that Rhode Island's MSWLF permit program is adequate, EPA does not intend to affect the rights of Federally recognized Indian Tribes in Rhode Island, nor does it intend to limit the existing rights of the State of Rhode Island. In addition, nothing in this action should be construed as making any determinations or expressing any position with regard to Rhode Island's audit law (R.I. Gen. Laws §§ 42–17.8–1 to 8–8). The action taken here does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Federally authorized, delegated, or approved program resulting from the effect of Rhode Island's audit law.

RCRA Section 4005(a) provides that citizens may use the citizen suit provisions of RCRA Section 7002 to enforce the 40 CFR part 258 criteria independent of any State enforcement program. EPA expects that any owner or operator complying with provisions in a State program approved by EPA should be considered to be in compliance with the 40 CFR Part 258 criteria.

III. Public Comments and Public Hearing

The public may submit written comments on this proposed rule. The deadline for submitting written comments is in the DATES section of this proposed rule. EPA will consider all public comments on this proposed rule that it receives during the public comment period and during any public hearing, if held. Issues raised by those comments may be the basis for a determination of inadequacy for Rhode Island's program. EPA will make a final decision on approval of the State of Rhode Island's program and will publish the final rule in the **Federal Register**. The final rule shall include a summary of the reasons for the final determination and responses to all significant comments.

Although RCRA does not require EPA to hold a public hearing on a tentative determination to approve any State's MSWLF permit program, EPA will hold a public hearing on this determination if enough persons express interest by either writing to EPA at the address in the **ADDRESSES** section above or calling the EPA representative listed in the **CONTACTS** section above within thirty (30) days of the date of publication of this proposed rule. EPA will notify all persons who submit comments on this notice if there is public interest in a hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the EPA representative listed in the **CONTACTS** section above. The State will participate in the public hearing if it is held.

Copies of Rhode Island's application are available for inspection and copying at the location indicated in the **ADDRESSES** section of this proposed rule.

IV. Regulatory Assessments

A. Compliance With Executive Order 12866: Regulatory Planning and Review

Under Executive Order (E.O.) 12866 (58 FR 51735, Oct. 4, 1993), EPA must determine whether any proposed or final regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has exempted today's action from E.O. 12866 review.

B. Compliance With E.O. 12875—Enhancing the Intergovernmental Partnership

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to 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, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's action implements requirements specifically set forth by the Congress in Sections 4005(c)(1)(B) and (c)(1)(C) of Subtitle D of RCRA, as amended, without the exercise of any discretion by EPA. Accordingly, the requirements of Section 1(a) of E.O. 12875 do not apply to today's action.

C. Compliance With E.O. 13045—Children's Health Protection

E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, Apr. 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, EPA 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 EPA. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. Today's action is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

D. Compliance With E.O. 13084—Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to OMB, in a separately identified section of the preamble to today's action, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the

regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's action implements requirements specifically set forth by Congress in Sections 4005(c)(1)(B) and (c)(1)(C) of Subtitle D of RCRA, as amended, without the exercise of any discretion by EPA. Accordingly, the requirements of Section 3(b) of E.O. 13084 do not apply to today's action.

E. Compliance With the Regulatory Flexibility Act

EPA has determined that this tentative determination of adequacy will not have a significant adverse economic impact on a substantial number of small entities. The MSWLF revised criteria in 40 CFR part 258 provide directors of States with approved programs the authority to exercise discretion and to modify various Federal requirements. Directors of approved States may modify certain of these Federal requirements to make them more flexible on either a site-specific or State-wide basis. In many cases, exercise of this flexibility results in a decrease in burden or economic impact upon owners or operators of MSWLFs. Thus, with EPA's determination that the Rhode Island MSWLF permitting program is adequate, the burden on MSWLF owners and operators in that State that are also small entities should be reduced. Moreover, because small entities that own or operate MSWLFs are already subject to the requirements in 40 CFR part 258 (although some small entities may already be exempted from certain of these requirements, such as the groundwater monitoring and design provisions (40 CFR 258.1(f)(1)), today's action does not impose any additional burdens on them.

F. Compliance With the Congressional Review Act

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 action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

G. Compliance With the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative, if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. It implements mandates specifically and explicitly set forth by the Congress in Sections 4005(c)(1)(B) and (c)(1)(C) of Subtitle D of RCRA, as amended, without the exercise of any policy discretion by EPA. In any event, EPA does not believe that this tentative determination of the State program's adequacy will result in estimated costs of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector, in any one year. This is due to the additional flexibility that the State can generally exercise (which will reduce, not increase, compliance costs). Moreover, this tentative determination will not significantly or uniquely affect small governments including Tribal small governments. As to the applicant, the State has received notice of the requirements of an approved program, has had meaningful and timely input into the development of the program requirements, and is fully informed as to compliance with the approved program. Thus, any applicable requirements of section 203 of the Act have been satisfied.

H. Compliance With E.O. 12898—Environmental Justice

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. EPA does not believe that today's proposed rule will have a disproportionately high and adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community.

I. Compliance With the National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is

not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 258

Environmental protection, Adequacy, Administrative practice and procedure, Municipal solid waste landfills, Non-hazardous solid waste, State permit program approval.

Authority: 42 U.S.C. 6912, 6945, 6949(a).

Dated: September 23, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–25839 Filed 10–4–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7298]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376. *§ 67.4.*

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Colorado	Breckenridge (Town) Summit County.	Blue River Middle Branch	Approximately 1,160 feet upstream of County Road 3.	None	*9,350
			Approximately 1,800 feet upstream of South Park Drive.	None	*9,631
		Cucumber Gulch	Approximately 100 feet upstream of confluence with Blue River Middle Branch.	None	*9,457
			Approximately 50 feet upstream of Airport Road.	None	*9,469
		Illinois Gulch	At confluence with Blue River Middle Branch.	*9,615	*9,615

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 200 feet upstream of Boreas Pass Road.	None	*9,743
		Jones Gulch	Approximately 1,250 feet upstream from confluence with Blue River.	None	*9,623
			Approximately 2,300 feet upstream from confluence with Blue River.	None	*9,665
Maps are available for inspection at the Engineering Office, 150 Ski Hill Road, Breckenridge, Colorado.					
Send comments to The Honorable Steve West, Mayor, Town of Breckenridge, P.O. Box 588, Breckenridge, Colorado 80424.					
Nevada	Washoe County and Incorporated Areas.	Mogul Creek	At intersection with Interstate 80 Frontage Road.	None	*4,680
		Approximately 1,050 feet upstream from Cliff View Court.		None	*4,737
Maps are available for inspection at Washoe County Engineering, 1001 East 9th Street, Reno, Nevada.					
Send comments to The Honorable Jim Galloway, Chairman, Washoe County Commission, P.O. Box 11130, Reno, Nevada 89520.					
Maps are available for inspection at the Community Development Office, 450 Sinclair Street, Reno, Nevada.					
Send comments to The Honorable Jeff Griffin, Mayor, City of Reno, P.O. Box 1900, Reno, Nevada 89505.					
Texas	Harris County and Incorporated Areas.	White Oak Bayou (E–100–00–00).	At confluence with Buffalo Bayou (W100–00–00).	*38	*38
			Just upstream of West 18th Street	*50	*59
			Just upstream of Lakeview Drive	*106	*107
			Approximately 300 feet upstream of Huffmeister Road.	*133	*133
		Little White Oak Bayou E(–101–00–00).	At confluence with White Oak Bayou (E–100–00–00).	*41	*43
			Just upstream of West Rittenhouse	*82	*86
		Brickhouse Gully (E115–00–00).	At confluence with White Oak Bayou (E–100–00–00).	*61	*68
				*89	*90
			Just upstream of Campbell Road Approximately 700 feet upstream of Talina Way.	*101	*101
		Cole Creek (E117–00–00)	At confluence with White Oak Bayou (E–100–00–00).	*67	*73
			Approximately 1,300 feet upstream of Sommermeyer Road.	None	*104
		Vogel Creek (E121–00–00).	At confluence with White Oak Bayou (E–100–00–00).	*77	*77
			Just upstream of West Gulf Bank Road	*86	*85
			Just upstream of Silentwood Lane	*105	*108
			Approximately 2,500 feet upstream of FairBanks-Fallbrook Road.	*115	*115
		Ditch (E141–00–00)	At confluence with White Oak Bayou (E–100–00–00).	None	*103
			Approximately 9,200 feet upstream of Windfern Forest.	None	*108
Maps are available for inspection at Harris County Permits Division, 9900 North West Freeway, Houston, Texas.					
Send comments to The Honorable Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002.					
Maps are available for inspection at the Planning and Development Office, 611 Walker, 6th Floor, Houston, Texas.					
Send comments to The Honorable Lee P. Brown, Mayor, City of Houston, P.O. Box 1562, Houston, Texas 77251.					
Maps are available for inspection at the Public Works Department, 16501 Jersey Drive, Houston, Texas.					
Send comments to The Honorable Steve Schneider, Mayor, City of Jersey Village, 16501 Jersey Drive, Houston, Texas 77040.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: September 27, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–25806 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7295]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Alabama	Northport (City),	Twomile Creek	Approximately 100 feet upstream of confluence with Twomile Creek.	*183	*184
	Tuscaloosa County	Tributary No. 5	Approximately 710 feet upstream of confluence with Twomile Creek.	*185	*186
Maps available for inspection at the City of Northport City Hall, 3500 McFarland Boulevard, Northport, Alabama.					
Send comments to The Honorable Wayne Rose, Mayor of the City of Northport, P.O. Box 569, Northport, Alabama 35476.					
Alabama	Tuscaloosa (City), Tuscaloosa County.	Bee Branch	At confluence with Hurricane Creek	None	*214
			Approximately 1,600 feet downstream of westbound Route 59.		
			Approximately 1,600 feet downstream of westbound Route 59.	None	*278
		Cottondale Creek	At confluence with Cottondale Creek	*248	*249
		Tributary No. 1	Approximately 1,600 feet upstream of 56th Street East Dam.	None	*298

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Cottondale Creek Tributary No. 1A.	At confluence with Cottondale Creek Tributary No. 1.	*267	*268
			Approximately 2,450 feet upstream of center point of Interstate 59 and 20/QVC Road culvert.	*289	*288
		Cypress Creek	Approximately 2,400 feet downstream of Kauloosa Avenue.	*147	*148
			Approximately 800 feet downstream of Springshill Drive.	*300	*301
		Cribbs Mill Creek	Approximately 1,000 feet downstream of 2nd Avenue East.	*180	*187
			Approximately 630 feet upstream of East 17th Street.	*258	*259
		Moody Swamp Tributary No. 2.	Approximately 660 feet downstream of 31st Street.	*141	*142
			Approximately 525 feet downstream of 25th Street.	*163	*159
		Moody Swamp Tributary No. 3.	Approximately 175 feet downstream of Martin Luther King Jr. Boulevard.	*140	*141
			Approximately 200 feet upstream of 10th Avenue.	*180	*179
Maps available for inspection at the City of Tuscaloosa Planning Office, City Hall, 2201 University Boulevard, Tuscaloosa, Alabama.					
Send comments to The Honorable Alvin P. DuPont, Mayor of the City of Tuscaloosa, P.O. Box 2089, Tuscaloosa, Alabama 35403.					
Alabama	Tuscaloosa County (Unincorporated Areas)	Bee Branch	Approximately 1,600 feet downstream of Westbound Route 59.	None	*278
			Approximately 400 feet downstream of Westbound Route 59.	None	*284
Maps available for inspection at the Tuscaloosa County Planning Department, 2902 6th Street, Tuscaloosa, Alabama.					
Send comments to The Honorable W. Hardy McCollum, Tuscaloosa County Probate Judge, P.O. Box 20067, Tuscaloosa, Alabama 35402–0067.					
Florida	Gulf County (Unincorporated Areas).	Gulf of Mexico	Approximately 0.47 mile southeast of intersection of State Route 30 and Sunset Avenue.	*6	*8
			Approximately 500 feet southwest of intersection of I–98 and Fourth Street.	*10	*16
			Approximately 250 feet east along Highway 30 of crossing of Highway 30 over Money Bayou.	None	*7
		St. Joseph Bay	Approximately 1,000 feet east along Airport Road from its intersection with Highway 30.	*7	*8
			At intersection of Jackson and Madison Streets.	None	*8
			Approximately 500 feet east of intersection of State Route 30 and Country Club Road.	*9	*12
Maps available for inspection at the Gulf County Courthouse, 1000 Fifth Street, Room 147, Port St. Joe, Florida.					
Send comments to Mr. Tommy Knox, Chairman of the Gulf County Board of Commissioners, 1000 Fifth Street, Port St. Joe, Florida 32456.					
Florida	Port St. Joe (City), Gulf County.	St. Joseph Bay	At intersection of 11th Street and Palm Boulevard.	None	*8
			Approximately 250 feet west of intersection of Constitution Drive and 14th Street.	*10	*12
			At intersection of 16th Street and Long Avenue.	*7	*8
		Shallow Flooding	Approximately 200 feet southeast of intersection of Fourth Street and Woodward Avenue.	*10	*8
Maps available for inspection at the Port St. Joe Chamber of Commerce Office, 105 West 4th Street, Port St. Joe, Florida.					
Send comments to The Honorable Frank Pate, Jr., Mayor of the City of Port St. Joe, 305 Cecil G. Costin, Sr., Boulevard, Port St. Joe, Florida 32456.					
Georgia	Blue Ridge (City), Fannin County.	Mineral Springs Creek.	Approximately 2,400 feet upstream of Pine Ridge Road.	None	*1,669

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 2,500 feet upstream of Pine Ridge Road.	None	*1,671
Maps available for inspection at the Fannin County Land Development Office, 171 Church Street, Blue Ridge, Georgia.					
Send comments to The Honorable Robert Green, Mayor of the City of Blue Ridge, P.O. Box 2349, Blue Ridge, Georgia 30513.					
Georgia	Fannin County (Unincorporated Areas).	Wilscot Creek	Approximately 580 feet downstream of Old Dial Road.	None	*1,726
			Approximately 0.73 mile upstream of State Route 60.	None	*1,920
		Sugar Creek	Approximately 50 feet downstream of CSX Transportation.	None	*1,509
			At Maxwell Road	None	*1,830
		Stanley Creek	Approximately 200 feet downstream of Aska Road.	None	*1,764
			Approximately 0.64 mile upstream of Stanley Creek Road.	None	*1,816
		Big Creek	At confluence with Toccoa River	None	*1,820
			Approximately 1.53 miles upstream of Big Creek Road.	None	*1,943
		Noontootla Creek	At confluence with Toccoa River	None	*1,838
			Approximately 1.04 miles upstream of Doublehead Gap Road.	None	*2,025
		Fightingtown Creek	Approximately 0.21 mile downstream of West Tennessee Avenue.	None	*1,460
			Approximately 1.57 miles upstream of Old Highway 2.	None	*1,804
		Cooper Creek	Approximately 0.51 mile downstream of Georgia Highway 60.	None	*2,004
			Approximately 3.54 miles upstream of Georgia Highway 60.	None	*2,087
		Hothouse Creek	Approximately 2.61 miles downstream of Georgia Highway 60.	None	*1,502
			Approximately 1.35 miles upstream of Laurel Springs Road.	None	*1,681
		Middle Reach Toccoa River.	Approximately 3.01 miles downstream of Shallowford Road.	None	*1,721
			Approximately 1.1 miles upstream of Doublehead Gap Road.	None	*1,880
		Upper Reach Toccoa River.	At confluence with Cooper Creek	None	*2,002
			Approximately 0.53 mile upstream of Private Drive (2nd).	None	*2,041
		Hemptown Creek	Approximately 300 feet downstream of Cutcane Road.	None	*1,563
			Approximately 0.87 mile upstream of Holly Ridge Lane.	None	*1,804
		Lower Reach Toccoa River.	Approximately 400 feet upstream from CSX Transportation.	None	*1,468
			Approximately 600 feet upstream from CSX Transportaiton.	None	*1,468
Maps available for inspection at the Fannin County Land Development Office, 171 Church Street, Blue Ridge, Georgia.					
Send comments to Mr. Clive Bowers, Jr., Chairman of the Fannin County Board of Commissioners, 171 Church Street, Blue Ridge, Georgia 30513.					
Georgia	McCaysville (City) Fannin County.	Toccoa River	Approximately 200 feet south of intersection of Hill Road and River Road.	None	*1,468
Maps available for inspection at the McCaysville City Hall, 223 Blue Ridge Drive, McCaysville, Georgia.					
Send comments to The Honorable Donney Dockery, Mayor of the City of McCaysville, P.O. Box 6, McCaysville, Georgia 30555.					
Minnesota	Becker (City) Sherburne County.	Mississippi River	Approximately 1.875 miles upstream of State Highway 25.	None	*913
			Approximately 6.56 miles upstream of State Highway 25.	None	*936
		Elk River	Approximately 900 feet upstream of County Highway 4.	None	*947
			Approximately 2.56 miles upstream of County Highway 4.	None	*951

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Becker City Hall, 12060 Sherburne Avenue, Becker, Minnesota.					
Send comments to The Honorable Judy Bowatz, Mayor of the City of Becker, P.O. Box 337, Becker, Minnesota 55308.					
Minnesota	Elk River (City) Sherburne County.	Trott Brook	Approximately 0.75 mile downstream of divergence of East Channel Trott Brook.	None	*880
			Approximately 0.4 mile upstream of divergence of East Channel Trott Brook.	None	*887
Maps available for inspection at the Elk River City Hall, 13065 Orono Parkway, Elk River, Minnesota.					
Send comments to The Honorable Stephanie Klinging, Mayor of the City of Elk River, P.O. Box 490, Elk River, Minnesota 55330.					
Minnesota	Sherburne County (Unincorporated Areas).	Mississippi River	Approximately 4.1 miles downstream of U.S. Route 101.	None	*856
			Approximately 0.51 mile downstream of St. Cloud Dam.	None	*971
		Elk River	Approximately 1,000 feet upstream of County Highway 4.	None	*947
			At Big Elk Lake	None	*968
Maps available for inspection at the Sherburne County Planning and Zoning Department, 13880 Highway 10, Elk River, Minnesota.					
Send comments to Mr. Terry Nagorski, Chairperson of the Sherburne County Board of Commissioners, 13880 Highway 10, Elk River, Minnesota 55330.					
New Jersey	Morris Plains (Borough).	Watnong Brook	Approximately 40 feet downstream of West Hanover Avenue.	*370	*371
	Morris County		Approximately 780 feet upstream of Conrail.	*448	*450
Maps available for inspection at the Morris Plains Borough Clerks Office, 531 Speedwell Avenue, Morris Plains, New Jersey.					
Send comments to The Honorable Frank Dreutzler, Mayor of the Borough of Morris Plains, P.O. Box 305, 531 Speedwell Avenue, Morris Plains, New Jersey 07950.					
New York	Cold Brook (Village)	Cold Brook	Approximately 80 feet downstream of U.S. Route 8 where it crosses just upstream of the downstream corporate limits.	None	*797
	Herkimer County		Approximately 75 feet upstream of U.S. Route 8 where it crosses just downstream of the upstream corporate limits.	None	*1,012
Maps available for inspection at the Cold Brook Village Hall, 457 Main Street, Cold Brook, New York.					
Send comments to The Honorable Juan Butera, Mayor of the Village of Cold Brook, P.O. Box 215, Cold Brook, New York 13324.					
New York	Cooperstown (Village). Otsego County.	Otsego Lake	Entire shoreline within community	None	*1,194
Maps available for inspection at the Cooperstown Village Hall, 22 Main Street, Cooperstown, New York.					
Send comments to The Honorable Wendell Tripp, Mayor of the Village of Cooperstown, P.O. Box 346, Cooperstown, New York, 13326.					
New York	Greenwich (Village)	Batten Kill	Approximately 1,185 feet downstream of Golden Fleece Dam.	None	*314
	Washington County		Approximately 2,160 feet upstream of the most upstream dam.	None	*343
Maps available for inspection at the Greenwich Village Hall, 6 Academy Street, Greenwich, New York.					
Send comments to The Honorable Christopher McCormick, Mayor of the Village of Greenwich, Village Hall, 6 Academy Street, Greenwich, New York 12834.					
New York	Lloyd (Town) Ulster County.	Black Creek	Approximately 100 feet downstream of Pancake Hollow Road.	None	*317
			Approximately 1.07 miles upstream of State Route 44.	None	*518
		Twaalfskill Creek	Approximately 140 feet downstream of Van Wagner Road.	None	*249
			Approximately 1 mile upstream of Tillison Avenue.	None	*337
Maps available for inspection at the Lloyd Town Hall, 12 Church Street, New York.					
Send comments to Mr. Raymond J. Constantino, Town of Lloyd Supervisor, 12 Church Street, Highland, New York 12528.					
New York	New Bremen (Town)	Black River	Approximately 100 feet downstream of State Route 410.	None	*737

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
	Lewis County		Approximately 0.95 mile upstream of Lowville and Beaver River Railroad.	None	*743
Maps available for inspection at the New Bremen Town Hall, RR 3, Lowville, New York.					
Send comments to Mr. Frederick J. Schneider, New Bremen Town Supervisor, RR 1 Box 85, Castorland, New York 13620.					
New York	Painted Post (Village).	Chemung River	At the downstream corporate limits	*942	*934
	Steuben County		At confluence of Cohocton and Tioga Rivers.	*943	*935
		Cohocton River	At confluence with Chemung and Tioga Rivers.	*943	*935
			Approximately 1,600 feet upstream of Conrail.	*945	*938
		Tioga River	At confluence with Chemung and Cohocton Rivers.	*943	*935
			Approximately 0.9 mile upstream of confluence with Chemung River.	*947	*938
Maps available for inspection at the Painted Post Village Hall, Corner of Steuben & West High Street, Painted Post, New York.					
Send comments to The Honorable Roswell Crozier, Jr., Mayor of the Village of Painted Post, P.O. Box 110, Painted Post, New York 14870.					
New York	Watson (Town) Lewis County.	Black River	At approximately 140 feet downstream of downstream corporate limits.	None	*743
	Lewis County		At upstream corporate limits	None	*747
Maps available for inspection at the Watson Town Hall, Clerk's Office, Star Route, Lowville, New York.					
Send comments to Mr. Virgil E. Taylor, Watson Town Supervisor, Star Route, Box 158, Lowville, New York 13367.					
North Carolina	Cumberland County (Unincorporated Areas).	Tank Creek	Approximately 100 feet downstream of Seaboard Coast Line Railroad.	None	*174
			Approximately 1,800 feet downstream of Seaboard Coast Line Railroad.	None	*171
Maps available for inspection at the Cumberland County Old Courthouse, Engineering Department, 130 Gillespie Street, Room 214, Fayetteville, North Carolina.					
Send comments to Mr. Clifford Strassenburg, Cumberland County Manager, Cumberland County Administrative Offices, P.O. Box 1829, Fayetteville, North Carolina 28302.					
North Carolina	Durham (City)	Rocky Creek	At confluence with Third Fork Creek	*289	*283
	Durham County		Approximately 150 feet upstream of Briggs Avenue.	*336	*330
		Third Fork Creek	Approximately 0.83 mile downstream of South Roxboro Road.	*252	*251
			Approximately 30 feet upstream of East Forest Hills Boulevard.	*310	*309
		Third Fork Creek Tributary A.	Approximately 900 feet upstream of Abandoned Road.	*252	*251
			Approximately 780 feet upstream of Rollingwood Drive.	*286	*285
		Third Fork Creek	Approximately 800 feet downstream of South Roxboro Road.	*254	*251
		Tributary C	Approximately 30 feet upstream of Princeton Avenue.	*317	*316
		Third Fork Creek	At confluence with Third Fork Creek	*255	*252
		Tributary D	Approximately 60 feet upstream of Morningside Drive.	*289	*286
		Third Fork Creek	At confluence with Third Fork Creek	*291	*289
		Tributary E	Approximately 420 feet downstream of Ward Street.	*322	*323
		Third Fork Creek	At confluence with Third Fork Creek Tributary C.	*276	*275
		Tributary	Approximately 125 feet downstream of Archdale Road.	*307	*306
Maps available for inspection at the Durham City Hall, Public Works Department, 101 City Hall Plaza, Durham, North Carolina.					
Send comments to The Honorable Nicholas J. Tennyson, Mayor of the City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701.					
North Carolina	Spring Lake (Town)	Tank Creek	At confluence with Tank Creek	*167	None
	Cumberland County	Tributary A	At CSX Transportation	None	*222

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Spring Lake Town Hall, Inspection's Department, 300 Ruth Street, Spring Lake, North Carolina. Send comments to The Honorable Marvin Lucas, Mayor of the Town of Spring Lake, P.O. Box 617, Spring Lake, North Carolina 28390.					
North Carolina	Warren County (Unincorporated Areas).	Lake Gaston	Entire shoreline within county	None	*205
Maps available for inspection at the Warren County Planning and Zoning Office, 720 West Ridgeway Street, Warrenton, North Carolina. Send comments to Ms. Loria Williams, Warren County Manager, P.O. Box 619, Warrenton, North Carolina 27589.					
Ohio	Harbor View (Village) Lucas County.	Maumee Bay	Approximately 300 feet east of the intersection of Autokee Street and Lakeview Avenue.	None	*579
Maps available for inspection at the Harbor View Village Hall, 327 Lakeview Drive, Harbor View, Ohio. Send comments to The Honorable Linda Sue Byrd, Mayor of the Village of Harbor View, P.O. Box 96, Harbor View, Ohio 43434.					
Ohio	Holland (Village)	Drennan Ditch	At confluence with Wolf Creek	None	*619
	Lucas County		At Village corporate limits	None	*634
Maps available for inspection at the Village of Holland Municipal Building, 1245 Clarion, Holland, Ohio. Send comments to The Honorable Michael Yunker, Mayor of the Village of Holland, 1245 Clarion Street, Holland, Ohio 43528.					
Ohio	Lucas County (Unincorporated Areas).	Ottawa River	At the State boundary	*579	*580
			Approximately 0.5 mile upstream of Summit Street.	*579	*580
		Maumee Bay	At Grassy Island	*579	*580
		Lake Erie	At the intersection of Decant Road and Arquette Road.	*578	*579
		Sautter Ditch	At Cedar Point Road	*578	*579
			Approximately 60 feet downstream of the confluence of Wolf Ditch.	*578	*579
		Berger Ditch	At mouth at Maumee Bay	*578	*579
			Just downstream of Cedar Point Road	*578	*579
		Cedar Creek	At the confluence with Reno Side Cut and Wards Canal.	*578	*579
			Just downstream of Lyon Road	*578	*579
		Drennan Ditch	An area approximately 1,350 feet west of the intersection of Columbus Street and Kipling Drive.	None	*634
		Zaleski Ditch	At the confluence with Cairl Ditch	None	*641
			At Whitehouse-Spencer Road	None	*667
		Haefner Ditch	Approximately 650 feet downstream of I–475.	None	*638
			At the confluence of Vanderpool Ditch	None	*641
		Vanderpool Ditch	At the confluence with Haefner Ditch	None	*641
			Approximately 75 feet downstream of North King Road.	None	*658
		Hill Ditch	Approximately 60 feet upstream of I–475	*637	*638
			Approximately 50 feet upstream of Central Avenue.	None	*652
Maps available for inspection at the Lucas County Engineering Office, One Government Center, Suite 801, Toledo, Ohio. Send comments to Ms. Sandy Isenburg, President of the Lucas County Board of Commissioners, One Government Center, Suite 800, Toledo, Ohio 43604.					
Ohio	Oregon (City) Lucas County.	Maumee Bay	Approximately 1,300 feet northwest of the intersection of Alabama Street and Mississippi Street.	*579	*580
			At the intersection of Norden Road and Jacobs Road.	*578	*579
Maps available for inspection at the City of Oregon Building and Zoning Inspection Department, 5330 Seaman Road, Oregon, Ohio. Send comments to The Honorable James A. Haley, Mayor of the City of Oregon, 5330 Seaman Road, Oregon, Ohio 43616.					
Ohio	Toledo (City) Lucas County.	Ottawa River	At the City of Toledo corporate limits	*579	*580
			At CSX Transportation	*579	*580
		Swan Creek	At the confluence with Maumee River	*579	*580
			Approximately 105 feet upstream of Monroe Street.	*579	*580
		Maumee River	At the confluence with Maumee Bay	*579	*580

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.6 mile downstream of the corporate limits.	*580	*581
		Maumee Bay	Entire coastline within the City of Toledo	*579	*580
Maps available for inspection at the City of Toledo Division of Building Inspection, One Government Center, Suite 1600, Toledo, Ohio.					
Send comments to The Honorable Carleton Finkbeiner, Mayor of the City of Toledo, One Government Center, Suite 2200, Toledo, Ohio 43604.					
Ohio	Whitehouse (Village) Lucas County.	Lone Oak Ditch	Just downstream of Whitehouse-Spencer Road.	None	*645
			Just upstream of Waterville Street	None	*655
Maps available for inspection at the Village of Whitehouse Zoning and Building Department, 6655 Providence Street, Whitehouse, Ohio.					
Send comments to Mr. Randy Bukas, Whitehouse Village Administrator, 6655 Providence Street, Whitehouse, Ohio 43571.					
Pennsylvania	Allegheny (Township) Westmoreland County.	Allegheny River	Approximately 4,100 feet of upstream side of Lock and Dam #4.	*765	*764
			Approximately 920 feet downstream of confluence with Kiskimentos River.	*771	*770
Maps available for inspection at the Allegheny Township Supervisor's Office, 136 Community Building Road, Leechburg, Pennsylvania.					
Send comments to Mr. Thomas Iseman, Chairman of the Allegheny Township Board of Supervisors, 136 Community Building Road, Leechburg, Pennsylvania 15656.					
Pennsylvania	Arnold (City) Westmoreland County.	Allegheny River	Approximately 2,300 feet upstream of New Kensington Highway.	*754	*753
			Approximately 4,300 feet upstream of New Kensington Highway.	*755	*754
Maps available for inspection at the Arnold City Hall, 1829 Fifth Avenue, Arnold, Pennsylvania.					
Send comments to The Honorable William DeMao, Mayor of the City of Arnold, 1829 Fifth Avenue, Arnold, Pennsylvania 15068.					
Pennsylvania	Aspinwall (Borough) Allegheny County.	Allegheny River	Approximately 650 feet downstream of Conrail Bridge.	*738	*739
			Approximately 1,050 feet upstream of Conrail Bridge.	*738	*739
Maps available for inspection at the Aspinwall Borough Municipal Building, 217 Commercial Avenue, Aspinwall, Pennsylvania.					
Send comments to Mr. Edward Warchol, Aspinwall Borough Manager, 217 Commercial Avenue, Aspinwall, Pennsylvania 15215.					
Pennsylvania	Brackenridge (Borough) Allegheny County.	Allegheny River	Approximately 3,690 feet upstream of Ross Street (New Tarentum Bridge).	*757	*756
			Approximately 1.23 miles upstream of Ross Street (New Tarentum Bridge).	*757	*756
Maps available for inspection at the Brackenridge Borough Office, 1000 Brackenridge Avenue, Brackenridge, Pennsylvania.					
Send comments to Mr. Ronald Dunlap, Sr., President of the Borough of Brackenridge Council, 1000 Brackenridge Avenue, Brackenridge, Pennsylvania 15014.					
Pennsylvania	Cheswick (Borough)	Allegheny River	Approximately 0.75 mile upstream of Lock and Dam No. 3.	*748	*749
	Allegheny County		Approximately 1.1 miles upstream of Lock and Dam No. 3 (at upstream corporated limits).	*748	*749
Maps available for inspection at the Cheswick Borough Office, 220 South Atlantic Avenue, Cheswick, Pennsylvania.					
Send comments to Mr. Andrew Bock, Cheswick Borough Secretary, 220 South Atlantic Avenue, Cheswick, Pennsylvania 15024.					
Pennsylvania	East Deer (Township).	Allegheny County	Approximately 1,375 feet upstream of New Kensington Highway.	*754	*753
	Allegheny River		Approximately 2,925 feet downstream of Ross Street (New Tarentum Bridge) (at upstream corporate limits).	*756	*755
Maps available for inspection at the Township of East Deer Municipal Building, 927 Freeport Road, Creighton, Pennsylvania.					
Send comments to Mr. Anthony Taliani, Chairman of the Township of East Deer Board of Commissioners, 927 Freeport Road, Creighton, Pennsylvania 15030.					
Pennsylvania	Etna (Borough)	Allegheny River	At confluence of Pine Creek	*735	*736
	Allegheny County		Approximately 1,750 feet downstream of Sixty Second Street Bridge.	*735	*736
		Pine Creek	At confluence with Allegheny River	*735	*736
			Just upstream of Poplar Street	*735	*736

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Etna Borough Office, 437 Butler Street, Pittsburgh, Pennsylvania.					
Send comments to Mr. Peter Ramage, President of the Etna Borough Council, 437 Butler Street, Pittsburgh, Pennsylvania 05223.					
Pennsylvania	Harmar (Township) ..	Allegheny River	Approximately 0.56 mile downstream of Oakmont-Hulton Highway.	*742	*743
	Allegheny County		Approximately 500 feet upstream of Lock and Dam No. 3.	*747	*748
Maps available for inspection at the Township of Harmar Municipal Building, 701 Freeport Road, Cheswick, Pennsylvania.					
Send comments to Mr. Donald R. Muse, Chairman of the Township of Harmar Board of Supervisors, 701 Freeport Road, Cheswick, Pennsylvania 15024.					
Pennsylvania	Harrison (Township)	Allegheny River	Approximately 0.85 mile downstream Lock and Dam No. 2.	*758	*757
	Allegheny County		Upstream side of Freeport Bridge	*769	*768
Maps available for inspection at the Township of Harrison Municipal Building, Municipal Drive, Natrona Heights, Pennsylvania.					
Send comments to Mr. George E. Conroy, President of the Harrison Township Board of Commissioners, P.O. Box 376, Natrona Heights, Pennsylvania 15065–0376.					
Pennsylvania	Lower Burrell (City) ..	Allegheny River	Approximately 1,600 feet upstream of Stevenson Boulevard.	*757	*759
	Westmoreland County.		Approximately 1,300 feet downstream of Lock and Dam #4.	*759	*758
Maps available for inspection at the City of Lower Burrell Engineer's Office, 2800 Bethel Street, Lower Burrell, Pennsylvania.					
Send comments to The Honorable Dennis L. Kowalski, Mayor of the City of Lower Burrell, 2800 Bethel Street, Lower Burrell, Pennsylvania 15068–3227.					
Pennsylvania	Millvale (Borough)	Allegheny River	Approximately 1,200 feet downstream of Fortieth Street.	*733	*734
	Allegheny County		Approximately 65 feet downstream of Fortieth Street.	*733	*734
		Allegheny River (Herr's Island Black Channel).	At downstream corporate limits	*733	*734
			Approximately 1,400 feet upstream of CSX Transportation.	*733	*734
Maps available for inspection at the Millvale Borough Hall, 501 Lincoln Avenue, Millvale, Pennsylvania.					
Send comments to The Honorable Jim Burn, Mayor of the Borough of Millvale, 501 Lincoln Avenue, Millvale, Pennsylvania 15209.					
Pennsylvania	New Kensington (City).	Allegheny River	Approximately 1,400 feet upstream of New Kensington Highway.	*754	*753
	Westmoreland County.		Approximately 1,600 feet upstream of Sterenson Boulevard.	*757	*756
Maps available for inspection at the New Kensington Municipal Building, 301 11th Street, New Kensington, Pennsylvania.					
Send comments to The Honorable Patrick Petit, Mayor of the City of New Kensington, New Kensington Municipal Building, 301 11th Street, New Kensington, Pennsylvania 15068.					
Pennsylvania	Oakmont (Borough)	Allegheny River	Approximately 0.56 mile downstream of Oakmont-Hulton Highway.	*742	*743
	Allegheny County		Approximately 0.92 mile downstream of Pennsylvania Turnpike.	*743	*744
Maps available for inspection at the Borough of Oakmont Municipal Building, Fifth Street and Virginia Avenue, Oakmont, Pennsylvania.					
Send comments to Ms. Adeline Brown, Oakmont Borough Manager, Municipal Building, Fifth Street and Virginia Avenue, Oakmont, Pennsylvania 15139.					
Pennsylvania	O'Hara (Township) ..	Allegheny River	Downstream side of Lock and Dam No. 2	*737	*738
	Allegheny County		Approximately 0.56 mile downstream of Oakmont-Hulton Highway.	*742	*743
Maps available for inspection at the O'Hara Township Office, 325 Fox Chapel Road, Pittsburgh, Pennsylvania.					
Send comments to Mr. Douglas Arndt, O'Hara Township Manager, 325 Fox Chapel Road, Pittsburgh, Pennsylvania, 15238.					
Pennsylvania	Penn Hills (Municipality).	Allegheny River	Approximately 1.1 miles upstream of Conrail Bridge.	*739	*740
	Allegheny County		At upstream corporate limits	*741	*742

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Municipality of Penn Hills Planning Department, 12245 Frankstown Road, Penn Hills, Pennsylvania.					
Send comments to Mr. John C. Brennan, Penn Hills Municipal Manager, 12245 Frankstown Road, Penn Hills, Pennsylvania 15235.					
Pennsylvania	Pittsburgh (City)	Allegheny River	Approximately 900 feet upstream of Ninth Street.	*731	*730
	Allegheny County		Approximately 1.1 miles upstream of Conrail Bridge.	*739	*740
		Allegheny River (Herr's Island Back Channel).	Just upstream of Conrail Bridge	*732	*733
			Approximately 1,400 feet upstream of CSX Transportation.	*733	*734
Maps available for inspection at the Pittsburgh City Planning Office, 200 Ross Street, Pittsburgh, Pennsylvania.					
Send comments to The Honorable Thomas Murphy, Mayor of the City of Pittsburgh, 414 Grant Street, Fifth Floor City/County Building, Pittsburgh, Pennsylvania 15219.					
Pennsylvania	Plum (Borough)	Allegheny River	At Pennsylvania Turnpike	*744	*745
	Allegheny County		Approximately 2,200 feet downstream of confluence of Pucketa Creek.	*751	*752
Maps available for inspection at the Plum Borough Planning and Zoning Office, 4575 New Texas Road, Pittsburgh, Pennsylvania.					
Send comments to Ms. Denise Herceg, Plum Borough Manager/Secretary, 4575 New Texas Road, Pittsburgh, Pennsylvania 15239.					
Pennsylvania	Shaler (Township)	Allegheny River	Approximately 0.80 mile upstream of Fortieth Street.	*734	*735
	Allegheny County		Approximately 1.4 miles upstream of Fortieth Street.	*735	*736
Maps available for inspection at the Shaler Township Hall, 300 Wetzel Road, Glenshaw, Pennsylvania.					
Send comments to Mr. Thomas McElhone, President of the Township of Shaler Board of Commissioners, 300 Wetzel Road, Glenshaw, Pennsylvania 15116.					
Pennsylvania	Sharpsburg (Borough).	Allegheny River	Approximately 1,200 feet downstream of Lock and Dam No. 2.	*736	*737
	Allegheny County		Approximately 300 feet downstream of Sixty Second Street Bridge.	*735	*736
Maps available for inspection at the Sharpsburg Borough Office, 10611 Main Street, Pittsburgh, Pennsylvania.					
Send comments to The Honorable Donald Schubert, Jr., Mayor of the Borough of Sharpsburg, 10611 Main Street, Pittsburgh, Pennsylvania 05215–2609.					
Pennsylvania	Springdale (Borough)	Allegheny River	Approximately 1.1 miles upstream of Lock and Dam No. 3.	*748	*749
	Allegheny County		Approximately 2,200 feet downstream of confluence of Pucketa Creek (at upstream corporate limits).	*751	*752
Maps available for inspection at the Borough of Springdale Municipal Building, 325 School Street, Springdale, Pennsylvania.					
Send comments to Mr. David Watts, Borough of Springdale Council President, P.O. Box 153, Springdale, Pennsylvania 15144–0153.					
Pennsylvania	Springdale (Township).	Allegheny River	Approximately 2,200 feet downstream of confluence of Pucketa Creek (at downstream corporate limits).	*751	*753
	Allegheny County		Approximately 1,790 feet downstream of New Kensington Highway.	*752	*753
Maps available for inspection at the Springdale Township Hall, 800 Plate Drive, Harwick, Pennsylvania.					
Send comments to Mr. Terry Sullivan, President of the Township of Springdale Board of Commissioners, P.O. Box 177, Harwick, Pennsylvania 15049.					
Pennsylvania	Tarentum (Borough)	Allegheny River	Approximately 2,925 feet downstream of Ross Street (New Taretum Bridge) (at downstream corporate limits).	*756	*755
	Allegheny County		Approximately 3,690 feet upstream of Ross Street (New Tarentum Bridge) (at upstream corporated limits).	*757	*756
Maps available for inspection at the Borough of Tarentum Municipal Building, 318 Second Avenue, Tarentum, Pennsylvania.					
Send comments to Mr. Tim Corunet, Tarentum Borough President, 318 Second Avenue, Tarentum, Pennsylvania 15084.					
Pennsylvania	Verona (Borough)	Allegheny River	Approximately 4,400 feet downstream of confluence with Plum Creek (at downstream corporate limits).	*741	*742

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
	Allegheny County		Approximately 300 feet downstream of confluence with Plum Creek.	*741	*742
Maps available for inspection at the Borough of Verona Municipal Building, 736 East Railroad Avenue, Verona, Pennsylvania.					
Send comments to The Honorable Leonard Brennan, Mayor of the Borough of Verona, 736 East Railroad Avenue, Verona, Pennsylvania 15147.					
South Carolina	Camden (City)	Bolton Branch	Approximately 40 feet upstream of Wilder Street.	None	*172
	Kershaw County		Approximately 300 feet upstream of Wylie Street.	None	*175
		Unnamed Tributary to Bolton Branch.	Approximately 200 feet downstream of Wylie Street.	None	*167
			Downstream side of Campell Street	None	*178
Maps available for inspection at the City of Camden Building Department, City Hall, Camden, South Carolina.					
Send comments to The Honorable Phil Minges, Mayor of the City of Camden, P.O. Box 7002, Camden, South Carolina 29020.					
South Carolina	Colleton County (Unincorporated Areas).	Ashepoo River	Approximately 2.38 miles downstream of CSX Transportation.	None	*8
			Approximately 225 feet upstream of Ritter Road.	None	*12
		Chessey Creek	At confluence with Horseshoe Creek	None	*8
			Approximately 75 feet upstream of Charleston Highway.	None	*10
		Edisto River	Approximately 1,750 feet downstream of U.S. Route 17.	*8	*12
			Approximately 400 feet upstream of upstream corporate limits (Bamburg/Colleton).	None	*92
		Great Swamp	Approximately 3.84 miles downstream of South Jeffries Boulevard.	None	*21
			Approximately 335 feet upstream of I–95 southbound.	None	*38
		Horseshoe Creek	At confluence with Ashepoo River	None	*8
			Approximately 40 feet upstream of Charleston Highway (State Route 64).	None	*12
		Ireland Creek	Approximately 500 feet upstream of South Jeffries Boulevard.	*34	*32
			Approximately 75 feet upstream of Industrial Boulevard.	*52	*50
		Wolf Creek	At confluence with Jones Swamp Creek ..	None	*42
			Approximately 180 feet upstream of Quail Drive.	None	*65
Maps available for inspection at the Colleton County Building Inspector's Office, Benson Street, Walterboro, South Carolina.					
Send comments to Mr. Arthur Williams, Colleton County Administrator, 31 Kleine Street, Walterboro, South Carolina 29488.					
South Carolina	Edisto Beach (Town) Colleton County.	Atlantic Ocean	Approximately 450 feet southeast of intersection of Nancy Street and Palmatto Boulevard.	*17	*20
			Approximately 200 feet south of intersection of King Cotton Road and Gun Bluff Road.	*15	*13
			Approximately 1,150 feet north, northwest of intersection of Yatch Club Road and Bay Point Drive.	*15	*20
			Approximately 1,600 feet north of intersection of Jungle Road and Mary Street.	*14	*16
Maps available for inspection at the Edisto Beach Town Hall, 2414 Myrtle Street, Edisto Beach, South Carolina.					
Send comments to The Honorable Burley L. Lyons, Mayor of the Town of Edisto Beach, 2414 Murray Street, Edisto Beach, South Carolina 29438.					
South Carolina	Kershaw County (Unincorporated Areas).	Bolton Branch	Approximately 330 feet downstream of Old Chestnut Ferry Road.	*153	*152
			Approximately 40 feet upstream of Wilder Street.	None	*172
		Flat Branch	At confluence with Twentyfive Mile Creek	None	*182

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 245 feet upstream of Wildwood Lane.	None	*271
		Gilles Creek	Approximately 150 feet of the confluence with Gilles Ditch.	*144	*145
			Approximately 0.81 mile upstream of Gilles Creek Road.	None	*225
		Haig Creek	At confluence with Spears Creek	None	*155
			Approximately 865 feet upstream of Fort Jackson Road.	None	*178
		Horsepen Creek	At confluence with Twentyfive Mile Creek	None	*188
			Approximately 300 feet upstream of Highway 1.	None	*292
		McCaskill Creek	At U.S. Route 601	None	*142
			Approximately 1.3 miles upstream of confluence of Rununder Branch.	None	*237
		Rununder Branch	At confluence with McCaskill Creek	None	*186
			Approximately 0.37 mile upstream of Spring Creek Road.	None	*246
		Sandy Branch	At confluence with Twentyfive Mile Creek	None	*235
			Approximately 1.14 miles upstream of Watson Street (At county boundary).	None	*261
		Sloan Branch	At confluence with Spears Creek	None	*166
			Approximately 320 feet upstream of Tower Road.	None	*203
		Spears Creek	At U.S. Route 601	None	*143
			Approximately 1.3 miles upstream of Fort Jackson Road.	None	*189
		Tributary to Haig Creek 1.	At confluence with Haig Creek	None	*178
			Approximately 1.6 miles upstream of Whiting Way.	None	*246
		Tuppler Branch	At confluence with Sandy Branch	None	*243
			Approximately 105 feet upstream of Sessions Road.	None	*305
		Twentyfive Mile Creek.	Approximately 1.4 miles downstream of Pine Grove Road.	*158	*159
			At upstream county boundary	None	*261
		Unnamed Tributary to Bolton Branch.	At confluence with Bolton Branch	*160	*158
			Approximately 200 feet downstream of Wylie Street.	None	*167
		Yankee Branch	At confluence with Twentyfive Mile Creek	None	*203
			Approximately 0.68 mile upstream of Chestnut Road.	None	*287
Maps available for inspection at the Kershaw County Planning and Zoning Office, County Courthouse, 1121 Broad Street, Camden, South Carolina.					
Send comments to Mr. Gordon Hartwig, Kershaw County Administrator, 1121 Broad Street, Camden, South Carolina 29020.					
South Carolina	Walterboro (City) Colleton County.	Great Swamp	Approximately 1.76 miles downstream of South Jeffries Boulevard.	*25	*26
			Approximately 200 feet upstream of South Jeffries Boulevard.	*34	*32
		Ireland Creek	At confluence with Great Swamp	*32	*31
			Approximately 0.66 mile upstream of North Jeffries Boulevard.	*43	*40
Maps available for inspection at the City of Walterboro Building, Official's Office, 242 Hampton Street, Walterboro, South Carolina.					
Send comments to The Honorable W. Harry Core, Jr., Mayor of the City of Walterboro, Box 709, Walterboro, South Carolina 29488–0709.					
Wisconsin	Crawford County (Unincorporated Areas).	Wisconsin River	At confluence with the Mississippi River ..	*629	*628
			At upstream county boundary	*660	*662
		Mississippi River	Approximately 4 miles downstream of U.S. Highway 18.	*629	*628
			Approximately 0.7 mile downstream of U.S. Highway 18.	*630	*629
Maps available for inspection at the Crawford County Zoning Department, 111 West Dunn Street, Prairie Du Chien, Wisconsin.					
Send comments to Mr. Robert Dillman, Chairman of Crawford County Board, 220 North Beaumont Road, Prairie Du Chien, Wisconsin 53821.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: September 27, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–25801 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–04–P

Notices

Federal Register

Vol. 64, No. 192

Tuesday, October 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

Forest Service

Revised Land and Resource Management Plan, Caribou National Forest, ID

AGENCY: Forest Service.

ACTION: Revised notice of intent to prepare an environmental impact statement in conjunction with revision of the Land and Resource Management Plan for Caribou National Forest, located in Bannock, Bear Lake, Bingham, Bonneville, Caribou, Franklin, Oneida, and Power counties, Idaho; Box Elder and Cache counties, Utah; and Lincoln County, Wyoming.

SUMMARY: On August 9, 1999, the Department of Agriculture, Forest Service filed notice of intent (**Federal Register** Vol. 64, No. 152, page 43142) to prepare an Environmental Impact Statement in conjunction with a revision of the Land and Resource Management Plan (hereinafter referred to as Forest Plan) for the Caribou National Forest.

The August 9 notice described the ''needs for change'' identified in the current Forest Plan to be revised, environmental issues considered, estimated dates for filing the Environmental Impact Statement, information concerning public participation, and the names and addresses of the agency officials who can provide additional information. The purpose of the notice was to begin the scoping phase of public involvement in the revision process, with a due date for comments of October 2, 1999.

This notice extends the comment period for the scoping from October 2 to October 17, 1999.

DATES: Comments concerning the intent to prepare a revised Forest Plan should be received in writing by October 17, 1999.

ADDRESSES: Send written comments to: Jerry Reese, Forest Supervisor, Caribou National Forest, 250 South 4th Avenue, Pocatello, Idaho 83201.

FOR FURTHER INFORMATION CONTACT: Paul Oakes, Planning Team Leader, Caribou National Forest (208) 236–7500.

Responsible official: Jack Blackwell, Intermountain Regional Forester, at 324 25th Street, Ogden, UT 84401.

Dated: September 28, 1999.

Jerry B. Reese,

Forest Supervisor, Caribou National Forest.

[FR Doc. 99–25785 Filed 10–4–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Antidumping and Countervailing Duties, Procedures for Initiation of Downstream Product Monitoring.

Agency Form Number: ITA–4119P.

OMB Number: 0625–0200.

Type of Request: Regular Submission.

Burden: 15 hours.

Number of Respondents: 1.

Avg. Hours Per Response: 15 hours.

Needs and Uses: The International Trade Administration's (ITA), Import Administration, AD/CVD Enforcement, implements the U.S. antidumping and countervailing duty law. Under section 1320 of the Omnibus Trade and Competitiveness Act of 1988, a domestic producer of an article that is like a component part of a downstream product may petition the Department of Commerce to designate the downstream product for monitoring. Section 1320, and the Department's rule 19 CFR 351.223, requires that the petition identify the downstream product to be monitored, the relevant component part, and the likely diversion of foreign exports of the component part into increased exports of the downstream product to the United States. ITA will evaluate the petition and will issue either an affirmative or negative ''monitoring'' determination.

Affected Public: U.S. companies or industries that suspect the presence of unfair competition from foreign firms selling merchandise in the United States below fair value.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, email LEngelme@doc.gov., Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: September 29, 1999.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–25753 Filed 10–4–99; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–810, C–412–811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Initiation and Preliminary Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed-circumstances antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received information sufficient to warrant initiation of a changed-circumstances administrative review of the antidumping and countervailing duty orders on hot-rolled lead and

bismuth carbon steel products from the United Kingdom. Based on this information, we preliminarily determine that Niagara LaSalle (UK) Limited is the successor-in-interest to Glynwed Metals Processing Limited for purposes of determining antidumping and countervailing duty liability. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 5, 1999.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Kate Johnson (Antidumping) or Dana Mermelstein (Countervailing), Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4007, (202) 482–4929, or (202) 482–3208, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR Part 351 (April 1999).

Background

On March 22, 1993, the Department published in the **Federal Register** the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom (58 FR 15324). Also, on March 22, 1993, the Department published in the **Federal Register** the companion countervailing duty order (58 FR 15327). On August 18, 1999, Niagara LaSalle (UK) Limited (Niagara LaSalle UK) submitted a letter stating that it is the successor-in-interest to Glynwed Metals Processing Limited (Glynwed), and requested that the Department conduct a changed-circumstances review to determine whether Niagara LaSalle UK should receive the same antidumping and countervailing duty treatment as is accorded Glynwed with respect to the subject merchandise. Niagara LaSalle UK requested that the result of the Department's changed-circumstances review be retroactive to May 21, 1999, the date of its acquisition of Glynwed.

Scope of the Review

The products covered by this review are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00; 7213.31.60.00; 7213.39.00.30; 7213.39.00.60; 7213.39.00.90; 7213.91.30.00; 7213.91.45.00; 7213.91.60.00; 7213.99.00; 7214.40.00.10, 7214.40.00.30, 7214.40.00.50; 7214.50.00.10; 7214.50.00.30, 7214.50.00.50; 7214.60.00.10; 7214.60.00.30; 7214.60.00.50; 7214.91.00; 7214.99.00; 7228.30.80.00; and 7228.30.80.50. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Initiation and Preliminary Results of Review

In a letter dated August 18, 1999, Niagara LaSalle UK advised the Department that, effective May 21, 1999, it had acquired Glynwed's steelmaking businesses, including two that are involved in manufacturing leaded steel subject to the antidumping and countervailing duty orders: Dudley Port Rolling Mills (Dudley Port), and George Gadd & Company (George Gadd). According to the submission, Niagara LaSalle UK was created as a subsidiary of Niagara Corporation, for the purpose of acquiring the assets of Glynwed's steel bar businesses. Niagara Corporation, a U.S. company, also owns Niagara LaSalle Corporation, a U.S. manufacturer of cold-finished steel bar. In its submission, Niagara LaSalle UK states that it purchased Glynwed's steel bar businesses as operating business units, and that all personnel, operations and facilities remain essentially unchanged. According to Niagara LaSalle UK, the only difference is that, on May 22, 1999, George Gadd and Dudley Port were combined to form a single business unit called Gadd Dudley Port Steel (Gadd Dudley Port).

Thus, in accordance with section 751(b) of the Act, the Department is initiating a changed-circumstances review to determine whether Niagara LaSalle UK is the successor-in-interest to Glynwed for purposes of determining antidumping and countervailing duty liability with respect to the subject merchandise. In making such a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (*Canadian Brass*). While no single or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994), *Canadian Brass*, and *Fresh and Chilled Atlantic Salmon from Norway: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 63 FR 50880 (September 23, 1998). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping and countervailing duty treatment as its predecessor.

We preliminarily determine that Niagara LaSalle UK is the successor-in-interest to Glynwed, following its acquisition of Glynwed. Niagara LaSalle UK submitted documentation supporting its claims that its acquisition of Glynwed's steelmaking businesses resulted in no significant changes in either production facilities, supplier relationships, customer base, or management. This documentation consisted of: (1) A letter from Niagara Corporation's president to all employees of the Steel Bar Businesses emphasizing the intended continuity in employment and operations; (2) the Sale of Business Agreement, stating that the business is being sold as a going concern; (3) a letter from Gadd Dudley Port to its suppliers shortly after the change in ownership, assuring suppliers of its continued business; (4) charts comparing the production facilities, billet suppliers, and customers, both before and after the acquisition; and (5) a chart comparing

the companies' management structures and employees both before and after the acquisition. These documents demonstrate that Glynwed's consolidated leaded steel bar business was purchased as a going concern, and its acquisition by Niagara LaSalle UK resulted in little or no change in production operations, facilities, personnel, supplier relationships and customer base, and that Niagara LaSalle UK's management team consists entirely of former Glynwed managers. Because Niagara LaSalle UK has presented evidence to establish a *prima facie* case of its successorship status, we find it appropriate to issue the preliminary results in combination with the notice of initiation in accordance with 19 CFR 351.221(c)(3)(ii).

Thus, we preliminarily determine that Niagara LaSalle UK should receive the same antidumping and countervailing duty treatment with respect to certain hot-rolled lead and bismuth carbon steel products as the former Glynwed. With regard to countervailing duties, Glynwed is excluded from the countervailing duty order. Thus, if these preliminary results are adopted in our final results of this changed circumstances review, we will instruct the Customs Service to liquidate, without regard to countervailing duties, all entries entered, or withdrawn from warehouse, for consumption on or after May 21, 1999, the date of Niagara LaSalle UK's acquisition of Glynwed. With regard to antidumping duties, a cash deposit rate of 7.69 percent will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this changed circumstances review.

Public Comment

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 21 days after the date of publication of this notice, or the first workday thereafter. Case briefs from interested parties may be submitted not later than 7 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in those comments, may be filed not later than 14 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.216 of the Department's regulations.

Dated: September 29, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–25873 Filed 10–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–811]

Final Results of Expedited Sunset Review: Drafting Machines From Japan

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of final results of expedited sunset review: drafting machines from Japan.

SUMMARY: On June 1, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on drafting machines from Japan pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party, and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited sunset review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW, Washington, DC 20230; telephone (202) 482–5050 or (202) 482–1560, respectively.

EFFECTIVE DATE: October 5, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3 *''Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

The merchandise subject to this order includes drafting machines that are finished, unfinished, assembled, or unassembled, and drafting machine kits. The term ''drafting machine'' refers to ''track'' or ''elbow-type'' drafting machines used by designers, engineers, architects, layout artists, and others. Drafting machines are devices for aligning scales (or rulers) at a variety of angles anywhere on a drawing surface, generally a drafting board. A protractor head allows angles to be read and set and lines to be drawn. The machine is generally clamped to the board. Also included within the scope are parts of drafting machines. Parts include, but are not limited to, horizontal and vertical tracks, parts of horizontal and vertical tracks, band and pulley mechanisms, protractor heads, and parts of protractor heads, destined for use in drafting machines. Accessories, such as parallel rulers, lamps and scales are not subject to this order. This merchandise is currently classifiable under the Harmonized Tariff Schedule (''HTS'') item numbers 9017.10.00 and 9017.90.00. (This merchandise was previously classified under item number 710.8025 of the Tariff Schedule of the United States.) The HTS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

History of the Order

On November 8, 1989, the Department issued a final determination of sales at less than fair value on imports of drafting machines from Japan.[1] On December 29, 1989, the antidumping duty order on the subject merchandise was published in the **Federal Register**.[2]

In the antidumping duty order the Department established an estimated weighted-average dumping margin of 90.87 percent for (one respondent)

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[1] *See Drafting Machines and Parts Thereof From Japan; Final Determination of Sales at Less Than Fair Value*, 54 FR 46961 (November 8, 1989).

[2] *See Drafting Machines and Parts Thereof From Japan; Antidumping Duty Order*, 54 FR 53671 (December 29, 1989).

Mutoh Industries, Ltd. (''Mutoh''), and an ''all others'' rate of 90.87 percent. *Id*. There have been no administrative reviews of this order, and no investigations of duty absorption by the Department.

The order remains in effect for Mutoh, and all other producers and exporters of drafting machines from Japan.

Background

On June 1, 1999, the Department initiated a sunset review of the antidumping duty order on drafting machines from Japan pursuant to section 751(c) of the Act. On June 16, 1999 we received a Notice of Intent to Participate on behalf of Vemco Drafting Products Corporation (''Vemco''), within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. We received a complete substantive response from the domestic interested party on July 1, 1999, within the deadline specified in section 351.218(d)(3)(i) of the *Sunset Regulations*. Vemco claimed interested party status under section 771(9)(C) of the Act as a U.S. manufacturer of a domestic like product. Vemco was the petitioner in the original investigation.

We did not receive any response from respondent interested parties in this review. As a result, and in accordance with our regulations (19 CFR 351.218(e)(1)(ii)(C)(2)) we determined to conduct an expedited sunset review of this order.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c)(1) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order. Pursuant to section 752(c)(3) of the Act, the Department shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of the margin are discussed below. In addition, Vemco's comments with respect to the continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2 of the Sunset Policy Bulletin). Additionally, the Department normally will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3 of the *Sunset Policy Bulletin*).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In its substantive response, Vemco argues that dumping is likely to continue or recur if the antidumping duty order on drafting machines from Japan were revoked because sales of the subject merchandise to the United States declined to negligible amounts after the Department imposed the antidumping duty order. Therefore, Vemco asserts that this action serves as evidence that producers and exporters of the subject merchandise cannot sell in any significant quantities in the United States without dumping.

Specifically, with regard to imports of the subject merchandise, Vemco asserts that prior to the imposition of this order, import volumes of drafting machines to the U.S. were substantial (*see* Vemco's Substantive Response, July 1, 1999 at 7), and that after the imposition of the order, Mutoh America, ceased its imports of drafting machines from Japan.[3] Because the applicable HTS item numbers cover imports in addition to the subject merchandise, (*i.e.*, cover a basket category) in further support of its assertion that sales ceased to the U.S., Vemco submitted an affidavit from Mr. Paul McManigal Vemco's Vice President (*see* Attachment 1 of Vemco's Substantive Response). In the affidavit, Mr. Paul McManigal states that since the imposition of the order he has closely monitored imports of drafting machines. Mr. McManigal notes that in the year following the issuance of the order imports declined in negligible amounts.

With regard to the existence of dumping margins, Vemco notes that in the Department's final determination of sales at less than fair value, the Department assigned a dumping margin to Mutoh and ''all others'' of 90.87 percent; the duty deposit rate of 90.87 percent still exists.

In conclusion, Vemco argues that a decline in import volume after the issuance of the order, coupled with the continuation of dumping margins above the *de minimis* level, is probative that producers and exporters of drafting machines from Japan will continue to dump if the order were revoked. Therefore, Vemco maintains that the Department should determine that there is a likelihood of the continuation of dumping of drafting machines from Japan if the order were revoked.

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, existence of dumping margins after the order is issued is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline of the order were revoked. We agree with Vemco that dumping margins above the *de minimis* level continue to exist for Mutoh, the only respondent reviewed in the original investigation.

Although Vemco asserts at various points in its argument that imports of drafting machines from Japan ceased entirely after the imposition of the order, the import statistics do not conclusively support a finding of

[3] Vemco variously asserts that imports of drafting machines from Japan have declined significantly, on the one hand, and ceased altogether, on the other.

cessation of imports. As noted above, imports of the subject merchandise enter the United States under an HTS basket category (*i.e.*, entries of non-subject merchandise are also reported under the same item number). After examining the Department's import trade statistics, we find that imports declined significantly after the issuance of the order. We are unable to determine from the statistics however whether the negilible imports under the HTS item number are of subject or non-subject merchandise.

As noted in the SAA, declining import volumes, accompanied by the continued existence of dumping margins after the issuance of the order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes. Therefore it is reasonable to conclude that Japanese producers and exporters of the subject merchandise cannot sell in the United States without dumping. Given that dumping above *de minimis* continued over the life of the order, imports decreased significantly after the issuance of the order, respondent interested parties waived their right to participate in the instant review, and absent argument and evidence to the contrary, the Department determines that dumping would likely continue or recur if the order on drafting machines from Japan were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department will provide to the Commission the company-specific margin from the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. Further, for companies not specifically investigated, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final affirmative determination of sales at less than fair value, published a weighted-average dumping margin of 90.87 percent for one Japanese producer/exporter of the subject merchandise, and an ''all others'' rate of 90.87 percent.

With respect to the magnitude of the margin likely to prevail if the order were revoked, in its substantive response, Vemco urged the Department to follow the guidance of the SAA and its stated policy and provide to the Commission the margins from the original investigation.

We agree with Vemco's assertion that we should report to the Commission the rate from the original investigation. Consistent with the *Sunset Policy Bulletin*, the Department, in this case, finds that the rates from the original investigation are the most probative of the behavior of Japanese producers and exporters of drafting machines if the order were to be revoked. Therefore, absent information and argument to the contrary, we see no reason to deviate from our stated policy, and we will report to the Commission the margins contained in the Final Results of Review of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated below.

Manufacturer/exporter	Margin (percent)
Mutoh Industries, Ltd. (Mutoh)	90.87
All Others	90.87

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: September 29, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–25874 Filed 10–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Forged Stainless Steel Flanges From India; Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: The Department of Commerce is rescinding the February 1, 1998 through January 31, 1999 antidumping duty administrative review of certain stainless steel flanges from India manufactured by Echjay Forgings Ltd.

EFFECTIVE DATE: October 5, 1999.

FOR FURTHER INFORMATION CONTACT: Tom Killiam or Mike Heaney, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–3019 and 482–4475, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, all references to the Department of Commerce's (''the Department's'') regulations are to 19 CFR part 351 (April 1998).

Scope of Review

The merchandise subject to this review is certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges

subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the HTSUS.

Rescission of 1997/98 Antidumping Duty Administrative Review

On March 29, 1999, in response to a request from Echjay Forgings, Ltd. (Echjay), the Department published a Notice of Initiation of Antidumping and Countervailing Administrative Reviews (64 FR 14860). Echjay was the only party who requested a review. Subsequently, we received information from respondent Echjay which indicated that the company made no sales or consumption entries of subject merchandise in the United States during the period of review. On May 25, 1999, the Department forwarded a no-shipment inquiry to the U.S. Customs Service (Customs) for circulation to all Customs ports. Customs did not indicate to the Department that there was any record of consumption entries of subject merchandise by Echjay during the POR. We are therefore rescinding this review in its entirety in accordance with section(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 351.213(d)(3) of our regulations.

This notice is published in accordance with section 777(i)(1) of the Act.

Dated: September 27, 1999.

Edward Yang,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–25752 Filed 10–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–706]

Revocation of Antidumping Duty Order: Nitrile Rubber From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty order: nitrile rubber from Japan.

SUMMARY: Pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the United States International Trade Commission (''the Commission'') determined that revocation of the antidumping duty order on nitrile rubber from Japan is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 51557 (September 23, 1999)). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), the Department of Commerce (''the Department'') is revoking the antidumping duty order on nitrile rubber from Japan. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2) the effective date of revocation is January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: January 1, 2000.

Background

On April 1, 1999, the Department initiated, and the Commission instituted, a sunset review (63 FR 15727 and 64 FR 15788, respectively) of the antidumping duty order on nitrile rubber from Japan pursuant to section 751(c) of the Act. As a result of the review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Expedited Sunset Review: Nitrile Rubber From Japan,* 64 FR 42668 (August 5, 1999).

On September 23, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on nitrile rubber from Japan would not likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Nitrile Rubber From Japan,* 64 FR 51557 (September 23, 1999), and USITC Pub. 3233, Inv. No. 731-TA–384 (Review) (September 1999)).

Scope

The merchandise covered by this order is nitrile rubber from Japan. Nitrile rubber from Japan is currently classifiable under item number 4002.59.0000 of the Harmonized Tariff Schedule (''HTS''). The HTS item number is provided for convenience and customs purposes. The written description remains dispostive.

Determination

As a result of the determination by the Commission that revocation of this antidumping duty order is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1) is revoking the antidumping duty order on nitrile rubber from Japan. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2), this revocation is effective January 1, 2000. The Department will instruct the U.S. Customs Service to discontinue suspension of liquidation and collection of cash deposit rates on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: September 29, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–25875 Filed 10–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Application may be examined between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 99–022. Applicant: Massachusetts Institute of Technology, Center for Cancer Research, 77 Massachusetts Avenue, Cambridge, MA 02139. Instrument: Fish Tank System, replacement parts for existing tank system, and fish breeding accessories. Manufacturer: Klaus-Jurgen Schwarz, Germany. Intended Use: The instrument will be used to house a large number of genetically different strains of fish for research to identify and clone the genes that are required to make a normal

living zebra fish embryo. The instrument will also be used to train graduate students and postdoctoral fellows to carry out genetic research on early vertebrate development using the zebra fish as an experimental model system. Application accepted by Commissioner of Customs: September 9, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–25872 Filed 10–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 990927265–9265–01]

National Voluntary Conformity Assessment System Evaluation (NVCASE) Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) hereby announces the establishment of a sub-program under the National Voluntary Conformity Assessment System Evaluation (NVCASE) program to recognize bodies that accredit certification bodies to certify products related to telecommunications equipment. The sub-program is being established in accordance with NVCASE regulations in response to a request from a Federal Agency, the Federal Communications Commission. Accreditation bodies recognized by NIST may then accredit certification bodies to certify that specified telecommunications equipment satisfies designated foreign or domestic government regulatory (i.e.,mandated) requirements.

The action taken under this notice addresses both generic and specific NVCASE requirements pursuant to U.S. Federal Communications Commission (FCC) requirements under FCC Docket 98–68, requirements relating to the telecommunications sector specified in the U.S.-European Union (EU) Mutual Recognition Agreement (MRA), and requirements specified in the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for the Conformity Assessment of Telecommunications Equipment. If MRSs covering telecommunications equipment are negotiated between the United States and another country or region, additional specific requirements may also be included under this NVCASE activity.

Sub-program requirements have been developed in accordance with NCVASE Regulations and with public consultation. Public input was obtained at two open meetings on April 27 and April 28, 1999 and from comments received through May 30, 1999.

DATES: Applications will be accepted beginning September 30, 1999.

ADDRESSES: Applications for recognition may be obtained from, and returned to, Robert L. Gladhill, NVCASE Program Manager, NIST, 100 Bureau Drive, Mailstop 2100, Gaithersburg, MD 20899–2100, by fax (301) 975–5414, or email at robert.gladhill@nist.gov.

FOR FURTHER INFORMATION CONTACT: Robert L. Gladhill, NVCASE Program Manager, at NIST, 100 Bureau Drive, Mailstop 2100, Gaithersburg, MD 20899–2100, telephone: (301) 975–4273, telefax: (301) 975–5414, email: robert.gladhill@nist.gov.

SUPPLEMENTARY INFORMATION: The NVCASE sub-program to recognize bodies that accredit certification bodies to certify telecommunications equipment is being established in accordance with the NVCASE Regulations (15 CFR 286.2(b)(3)(ii)) and in response to requirements as described in FCC GEN Docket 98–68 (FCC 98–338), adopted on December 17, 1998, and FCC Public Notice DA 99–1640, released August 17, 1999. This sub-program also supports NIST's responsibilities as a designating authority for the United States in both the Telecommunication Equipment Sectoral Annex of the U.S./EU MRA (which may be located at *http://www.iep.doc.gov/mra/mra.htm*) and the APEC MRA for Conformity Assessment of Telecommunications Equipment (which may be located at *http://www.apii.or.kr/telwg/mraTG/mraTG-frame.html*).

As referenced in this notice, telecommunications equipment covers network terminal attachment and other equipment subject to telecommunications regulations, including wire and wireless equipment, transmitters, and terrestrial and satellite equipment, whether or not connected to a Public Telecommunications Network.

Generic and specific requirements for this NVCASE sub-program have been established in accordance with NVCASE regulations (15 CFR 286.5). Public input on the establishment of sub-program requirements was received during two workshops held at the Department of Commerce on April 27 and 28, 1999. These workshops were announced in the **Federal Register** on March 19, 1999 (64 FR 13543). Follow-up comments from the public were accepted through May 30, 1999.

NIST will apply the generic requirements contained in the International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Guide 61—''General Requirements for Assessment and Accreditation of Certification/Registration Bodies,'' to all applicant accreditation bodies. Certification bodies applying to recognized accreditation bodies are to be assessed against the requirements of ISO/IEC Guide 65—''General Requirements for Bodies Operating Product Certification Systems.'' These generic requirements will be supplemented by specific requirements contained in individual NVCASE program handbooks, available on request from NIST.

For the FCC Telecommunications Certification Body (TCB) program, established in FCC Docket 98–68, NIST will apply requirements contained in the Docket and information published subsequently by the FCC. The FCC TCB programs requires that TCBs be accredited to both ISO/IEC Guide 65—''General Requirements for the Competence of Testing and Calibration Laboratories.'' The FCC has determined that a prospective TCB which is already accredited to ISO/IEC Guide 25 by NIST's National Voluntary Laboratory Accreditation Program (NVLAP), the American Association for Laboratory Accreditation (A2LA), or another recognized body will not have to obtain another Guide 25 accreditation, provided that the equipment it certifies is covered by the scope of its accreditation.

Organizations seeking to operate as Conformity Assessment Bodies (CABs) for the purposes of certifying products relating to telecommunications equipment covered under the provisions of the U.S.–EU MRA and APEC MRA must be accredited to ISO/IEC Guide 65; however, they are not presently required to be accredited to ISO/IEC Guide 25. Both the U.S.–EU MRA and APEC MRA (Phase I) also provide for a separate role for testing laboratories accredited to ISO/IEC Guide 25 for specific test methods. A separate NVCASE sub-program to recognize accreditors of testing laboratories is also being established to meet this requirement.

As stated in the NVCASE regulations (15 CFR 286.4), the NVCASE program is operated on a cost reimbursable basis. It is open for voluntary participation by any U.S.-based body that conducts activities relating to conformity assessment falling within the program's

scope. Pursuant to this notice, NIST will accept applications from accreditation bodies that are interested in being recognized to accredit certification bodies under the FCC TCB program, the telecommunications equipment sectoral annex of the U.S./EU MRA or the APEC MRA if they meet the above criteria. Prospective accreditation bodies must submit a complete application and required fees by October 30, 1999 in order to be included in the initial group to be evaluated.

Accreditation bodies seeking recognition for the purposes of the FCC TCB program may begin accepting applications from candidate TCBs immediately. To ensure fairness in the process, initial applications to become a TCB will be handled as a group. All such applications filed and accepted by November 15, 1999 by an accreditation body which has applied to NIST for recognition will be handled in the first group of TCBs. Applications received subsequently will be considered on an as-received basis for evaluation after the initial group of applicants has been considered.

The evaluation of the first group of accreditation bodies applying for NVCASE recognition will begin on or about November 15, 1999. All accreditation bodies that have submitted a complete application and required fees to NIST by October 30, 1999, will be included in this initial group. Applications received subsequently will be considered on an as-received basis for evaluation after the initial group of applicants has been considered.

NIST expects to announce recognition of qualified accreditation bodies on or about March 1, 2000. At about the same time, NIST also expects to identify and list an initial group of qualified certifiers for each of the areas noted. Certifiers listed under the provisions of the telecommunications equipment sectoral annex of the U.S./EU MRA or under the APEC MRA will be designated by NIST as conformity assessment bodies. Certifiers listed under the provisions of FCC Docket 98–68 will be nominated to the FCC for designation as TCBs.

Notwithstanding any other provision of law, no person is required to respond nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This notice involves a collection of information approved under OMB Control No. 0693–0019.

Dated: September 29, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–25748 Filed 10–4–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092499O]

Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT); Fall Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Advisory Committee to the U.S. Section to ICCAT will hold its annual fall meeting on October 24–26, 1999.

DATES: The open sessions will be held on October 24, 1999, from 12:15 p.m. to 6:00 p.m. and October 25, 1999, from 8:30 a.m. to 12:00 p.m. Closed sessions will be held on October 25, 1999, from 2:00 p.m. to 6:30 p.m. and on October 26, 1999, from 8:00 a.m. to 1:30 p.m. Written comments should be received no later than October 20, 1999.

ADDRESSES: The meeting will be held at the Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD. Written comments should be sent to Kim Blankenbeker, Executive Secretary to the Advisory Committee, NOAA - Fisheries/SF4, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Patrick E. Moran, (301) 713-2276.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in two open sessions to consider information on stock status of highly migratory species and 1999 management recommendations of ICCAT's Standing Committee on Research and Statistics. Also in the open sessions, the Advisory Committee will review the results of recent meetings including: ICCAT working group meetings on allocation criteria, the precautionary approach, and bycatch; Advisory Committee regional meetings; and the Committee's 1999 minimum size workshop. The Committee will also discuss other ICCAT-related activities. Furthermore, the Committee will review the implementation of 1998 and prior ICCAT recommendations and resolutions and will receive an overview of implementation of recommendations for research and management resulting from its Spring 1999 Species Working Group meeting. Both sessions will be open to the public; however, the October 24, 1999, session will be the only opportunity for public comment. Written comments are encouraged and, if mailed, should be received by October 20, 1999 (see **ADDRESSES**). Written comments can also be submitted during the open sessions of the Advisory Committee meeting.

The Advisory Committee will go into executive session for the afternoon session of October 25, 1999, and for the entire October 26 session to discuss sensitive information. These sessions are not open to the public.

The public is reminded that NMFS expects members of the public to conduct themselves appropriately for the duration of the meeting. At the beginning of the public comment session, an appropriate representative will explain the ground rules (e.g., alcohol in the meeting room is prohibited, attendees will be called to give their comments in the order in which they registered to speak, each attendee will have an equal amount of time to speak, and attendees should not interrupt one another). The appropriate representative will attempt to structure the session so that all attending members of the public are able to comment, if they so choose, regardless of the degree of controversy of the subject(s). Attendees are expected to respect the ground rules, and if they do not, they will be asked to leave the meeting.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Patrick E. Moran at (301) 713–2276 at least 7 days prior to the meeting date.

Dated: September 30, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–25866 Filed 10–4–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092999A]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Oversight Committee in October 1999. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate. This will be a joint meeting with the Atlantic States Marine Fisheries Commission Atlantic Herring Section.

DATES: The meeting will held on Thursday, October 21, 1999, at 10:00 a.m.

ADDRESSES: The meeting will be held at the Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone
(978)777–2500.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, Massachusetts 01906–1036; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION: The committee will discuss various options for developing a controlled access program for the Atlantic herring fishery. The committee also may discuss other herring management issues, including spawning area closures, gear competition and interactions in the Gulf of Maine, management area Total Allowable Catches (TACs), and changing the start date of the fishing year. There will be a brief closed session to discuss appointments to the Herring Advisory Panel.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: September 29, 1999.

Richard W. Surdi,

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

[FR Doc. 99–25755 Filed 10–4–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092899H]

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 Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Dr., La Jolla, CA 92037, has requested an amendment to scientific research Permit No. 1024.

DATES: Written or telefaxed comments must be received on or before November 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, NMFS, 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 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 1024, issued on December 30, 1997 (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.*)and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 1024 authorizes the permit holder to take Antarctic fur seals and other Antarctic pinnipeds by capture, handle, tag and attach satellite transmitters. The permit holder requests an increase take of 200 adult female Antarctic fur seals (100 each year for two years) for tooth extraction. Animals will be anesthetized using isoflurane delivered with oxygen to the mask via a portable vaporizer. Also, to minimize stress the animals, 2–3mg (dependent on body size) of benzo9diazepines is administered intravenously during induction of isoflurane anesthesia. The area of the tooth extraction will be cleansed with antiseptic solution during and after extraction.

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: September 28, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–25754 Filed 10–4–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

September 30, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 5, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59946, published on November 6, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on October 5, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Specific limits	
226/313	139,721,594 square meters.
237	143,950 dozen.
331/631	3,145,096 dozen pairs.
334/634	357,773 dozen.
335/635	431,447 dozen.
338	6,342,757 dozen.
339	1,820,243 dozen.
347/348	1,108,795 dozen.
359–C/659–C [2]	1,014,442 kilograms.
360	6,374,146 numbers.
361	7,411,797 numbers.
363	52,498,126 numbers.
369–F/369–P [3]	2,913,089 kilograms.
369–S [4]	866,255 kilograms.
613/614	27,180,846 square meters
615	28,674,693 square meters.
625/626/627/628/629	71,095,682 square meters of which not more than 41,929,654 square meters shall be in Category 625; not more than 41,929,654 square meters shall be in Category 626; not more than 41,929,654 square meters shall be in Category 627; not more than 8,675,101 square meters shall be in Category 628; and not more than 41,929,654 square meters shall be in Category 629.
638/639	138,149 dozen.
647/648	915,419 dozen.
666–P [5]	869,333 kilograms.
666–S [6]	4,782,383 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[6] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–25877 Filed 10–4–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Thailand

September 30, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 6, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, carryforward, carryforward used and re-crediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096,

published on December 23, 1998). Also see 63 FR 58369, published on October 30, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 27, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the period which began on January 1, 1999 and extends through December 31, 1999.

Effective on October 6, 1999, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
300	4,841,738 kilograms.
301–O [2]	1,105,545 kilograms.
314–O [3]	62,268,628 square meters.
363	24,494,704 numbers.
369–D [4]	269,213 kilograms.
603	2,443,598 kilograms.
604	862,199 kilograms of which not more than 516,609 kilograms shall be in Category 604–A [5].
607	3,685,143 kilograms.
613/614/615	46,481,556 square meters of which not more than 30,307,739 square meters shall be in Categories 613/615 and not more than 30,307,739 square meters shall be in Category 614.
619	8,007,894 square meters.
620	7,899,539 square meters.
Sublevels in Group II	
336/636	389,178 dozen.
338/339	2,193,680 dozen.
340	350,262 dozen.
345	326,098 dozen.
347/348/847	975,880 dozen.
442	23,347 dozen.
638/639	2,274,280 dozen.
647/648	1,199,383 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 301–O: only HTS numbers 5205.21.0020, 5205.21.0090, 5205.22.0020, 5205.22.0090, 5205.23.0020, 5205.23.0090, 5205.24.0020, 5205.24.0090, 5205.26.0020, 5205.26.0090, 5205.27.0020, 5205.27.0090, 5205.28.0020, 5205.28.0090, 5205.41.0020, 5205.41.0090, 5205.42.0020, 5205.42.0090, 5205.43.0020, 5205.43.0090, 5205.44.0020, 5205.44.0090, 5205.46.0020, 5205.46.0090, 5205.47.0020, 5205.47.0090, 5205.48.0020 and 5205.48.0090.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 604–A: only HTS number 5509.32.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–25876 Filed 10–4–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa and Quota Requirements for Certain Textile Products Produced or Manufactured in Various Countries and Re-Imported

September 30, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa and quota requirements for goods re-imported.

EFFECTIVE DATE: October 8, 1999.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Harmonized Tariff Schedule of the United States (HTS) heading 9801.00.26 provides that certain previously imported articles that were exported to individuals for personal use and are re-imported without having been advanced in value or improved in condition may be imported duty-free. Effective on October 8, 1999, textile and apparel products which are produced or manufactured in various countries and have previously been entered into the United States for consumption or withdrawal from warehouse for consumption under quota and visa requirements are exempt from visa and quota requirements upon re-entry into the United States if entered under HTS heading 9801.00.26.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, all import control directives issued to you by the Chairman, Committee for the Implementations of Textile Agreements. This directive also amends, but does not cancel, all visa requirements for all countries for which visa arrangements are in place with the United States.

Effective on October 8, 1999, you are directed to exempt from visa and quota requirements, upon re-entry into the United States, textile and apparel products entered under HTS heading 9801.00.26 which are produced or manufactured in various countries and have previously been entered into the United States for consumption or withdrawal from warehouse for consumption under quota and visa requirements.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–25878 Filed 10–4–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB review; comment request

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: Army ROTC 4-Year Scholarship Application; ROTC Cadet Command Form 114; OMB Number 0702–0073.

Type of Request: Reinstatement.

Number of Respondents: 7,500.

Responses per Respondent: 1.

Annual Responses: 7,500.
Average Burden per Response: 45 minutes.
Annual Burden Hours: 5,625.
Needs and Uses: The ROTC scholarship provides the Army with highly qualified men and women who desire to pursue a commission in the U.S. Army. The application and information provides the basis for the scholarship award. The education, physical, and academic potential are critical factors in an applicant's overall evaluation. Completed applications are submitted to Headquarters, Cadet Command for review, screening, and selection of scholarship recipients.
Affected Public: Individuals or Households.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 28, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–25758 Filed 10–4–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB review; Comment Request

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).
Title, Form Number, and OMB Number: International Military Student Information; DD Form 2339; OMB Number 0702–0064.
Type of Request: Reinstatement.
Number of Respondents: 3,000.
Responses per Respondents: 1.
Annual Response: 3,000.
Average Burden per Response: 15 minutes.
Annual Burden Hours: 750.
Need and Uses: The DD Form 2339 is used in support of international military students who are attending training in the United States with the Military Departments as part of the security assistance training program. The DD Form 2339 is utilized in gathering information on the international student prior to their arrival in the United States in order that civilian and military sponsors can be assigned to assist the student during training.
Affected Public: Individuals or Households.
Frequency: On occasion.
Respondents Obligation: Voluntary.
OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer, at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DoD Clearance Officer: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 28, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–25759 Filed 10–4–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).
Title, Form Number, and OMB Number: Disposition of Remains—Reimbursable Basis Request for Payment of Funeral and/or Interment Expenses; DD Forms 2065 and 1375; OMB Number 0704–0030.
Type of Request: Reinstatement.
Number of Respondents: 2,450.
Responses per Respondent: 1.
Annual Responses: 2,450.
Average Burden per Response: 20 minutes (DD 2065); 10 minutes (DD 1375).
Annual Burden Hours: 425.
Needs and Uses: The DD Form 2065 records disposition instructions and costs for preparation and final disposition of remains. DD Form 1375 provides next-of-kin with an instrument to apply for reimbursement of funeral/interment expenses. This information is used to adjudicate claims for reimbursement of these expenses.
Affected Public: Individuals or Households.
Frequency: On occasion.
Respondent's Obligation: Required to Obtain or Retain Benefits.
OMB Desk Officer: Mr. Edward C. Springer.
Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. Robert Cushing.
Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 28, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 99–25760 Filed 10–4–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).
Title and OMB Number: TRICARE Enrollment Application Form; OMB Number 0720–0008.
Type of Request: Reinstatement.
Number of Respondents: 575,210.
Responses per Respondent: 1.
Annual Responses: 575,210.
Average Burden per Response: 15 minutes.
Annual Burden Hours: 143,802.
Needs and Uses: The form serves as an application form for enrollment in the TRICARE Health Care Delivery Program established in accordance with 10 U.S.C. 1099. The Department of Defense established TRICARE to povide for a more cost effective program for the delivery of health care services and to

improve the quality and access to health care services. The information collected provides the private Third Party Administrator, contracted to provide administrative support services, with necessary data to determine beneficiary eligibility, other health insurance liability, premium payment, and to identify the selection of a health care option.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be send to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 28, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–25761 Filed 10–4–99; 8:45 am]

BILLING CODE 5001–16–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Monticello Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Monticello. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

Date and Time: Wednesday, October 20 1999, 7:00 p.m.–9:00 p.m.

Address: San Juan County Courthouse, 2nd Floor Conference Room, 117 South Main, Monticello, Utah 84535.

FOR FURTHER INFORMATION CONTACT: Audrey Berry, Public Affairs Specialist, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO, 81502 (303) 248–7727.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. The Board will receive an update on the repository status.
2. The Board will discuss the Monticello surface and groundwater.
3. The Committee will receive reports from subcommittees on local training and hiring, health and safety, and future land use.

Please note, this will be the final meeting of the Environmental Management Site Specific Advisory Board, Monticello.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (303) 248–7727.

Issued at Washington, DC on September 30, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–25867 Filed 10–4–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Sandia

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM–SSAB), Kirtland Area Office (Sandia).

DATES: Wednesday, October 20, 1999: 5:30 p.m.–9:00 p.m. (MST)

ADDRESSES: 7505 Kathryn Avenue, SE, Albuquerque, New Mexico 87108 (505) 256–2680.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

5:30–6:00 p.m. Corrective Action Management Unit (CAMU) Visuals with Commentary Session
6:00–6:15 p.m. Check In/Minutes/Agenda Approval
6:15–6:30 p.m. CAMU Presentation
6:30–7:00 p.m. CAMU Public Comment
7:00–7:15 p.m. Break
7:15–7:30 p.m. Chairs Conference Report—Ted Truske, Meeting Manager
7:30–8:30 p.m. Stewardship, Briefing Kick-Off, Dialogue
8:30–8:50 p.m. Work Plan Report and Task Group Reports (if time permits)
8:50–9:00 p.m. Adjourn
8:45–8:50 p.m. Work Plan (Miles Nelson)
8:50–9:00 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal

Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC, on September 30, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–25869 Filed 10–4–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Hydrogen Technical Advisory Panel; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Hydrogen Technical Advisory Panel. Federal Advisory Committee Act (Public Law No. 92–463, 86 Stat. 770, as amended), requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, October 20, 1999, 8:30 a.m.–6:00 p.m.

ADDRESSES: California Air Resources Board, 2020 L Street, Sacramento, California 95814.

FOR FURTHER INFORMATION CONTACT: Neil Rossmeissl, Alternate Designated Federal Officer, Hydrogen Program Manager, EE–13, Office of Power Technologies, Department of Energy, Washington, DC 20585; Telephone: 202–586–8668.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

—The major purpose of this meeting will be to hold a round table discussion on the Role of Local, State and Federal Governments in Supporting and Encouraging the Transition to Hydrogen Energy Systems.

Tentative Agenda

Wednesday, October 20, 1999

8:30 am Introduction and Opening Comments	D. Nahmias
8:40 HTAP Committee Reports:	
—Coordination	H. Chum
—Scenario Planning	H. Wedaa
—Fuel Choice	R. Nichols
9:10 State of California—Hydrogen Activities—Today and Tomorrow:	
''Science, Technology and the Economy for the 21st Century''Keynote address	K. Calvert (invited)
—California Air Resources Board	A. Lloyd
—California Energy Commission	D. Rohy
10:10 Break	
10:30 State of California—Hydrogen Activities—Today and Tomorrow, continued:	
—South Coast Air Quality Management District	C. Liu
—Sacramento Metropolitan Air Quality Management District	T. Taylor
—California Hydrogen Business Council	D. Moard
—Union of Concerned Scientists	J. Mark
—UC Riverside	J. Heffel
—UC Davis	J. Kraovoza
12:00 pm Lunch	
1:00 Roundtable Discussion on Role of Local, State, and Federal Governments in Supporting and Encouraging the Transition to Hydrogen Energy Systems	
2:00 DOE Program Report	S. Gronich
2:45 Results of 1999 Hydrogen Program Peer Review	N. Rossmeissl
3:00 Hydrogen: Perspectives and Prospects	H. Hubbard
3:30 Break	
4:00 Public Comments (5 minutes maximum per speaker	Audience
5:00 HTAP Deliberations	Panel
6:00 Adjourn	

Public Participation: This meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mr. Neil Rossmeissl's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentations in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

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 through Friday, except Federal Holidays. Minutes will also be available by writing to Neil Rossmeissl, Department of Energy, 1000 Independence Avenue, SW Washington, DC 20585, or by calling (202) 586–8668.

Issued at Washington, DC, on September 30, 1999.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–25868 Filed 10–4–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Applicant Prepared Environmental Assessment Accepted for Filing; Soliciting Motions To Intervene and Protests; Requesting Comments, Final Terms and Conditions, Recommendations and Prescriptions; and Requesting Reply Comments

September 29, 1999.

Take notice that the following hydroelectric application and Applicant Prepared Environmental Assessment (APEA) has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2077–016.

c. *Date filed:* July 29, 1999.

d. *Applicant:* USGen New England, Inc.

e. *Name of Project:* Fifteen Mile Falls Hydroelectric Project.

f. *Location:* The project is located on the Connecticut River, in Grafton and Coos Counties, New Hampshire, and Caledonia and Essex Counties, Vermont. The project would not utilize any federal lands or facilities.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Cleve Kapala, USGen New England, Inc., 46 Centerra Parkway, Lebanon, NH 03766.

i. *FERC Contact:* Any questions on this notice should be addressed to William Guey-Lee, E-mail address william.gueylee@ferc.fed.us, or telephone (202) 219–2808.

j. *Deadline for filing motions to intervene, protests, comments, final terms and conditions, recommendations, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St. NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, the intervenor must also serve a copy of the document on that resource agency.

k. *Status of Environmental Analysis:* On April 22, 1998, the Director, Office of Hydropower Licensing approved USGen New England, Inc.'s use of the Alternative Licensing Process. National Environmental Policy Act (NEPA) scoping for the project was conducted through scoping documents distributed in May and August of 1998, and in public scoping meetings on June 4 and 5, 1998. The draft license application and APEA were distributed by the applicant for comment on March 3, 1999..

Commission staff has reviewed the license application and APEA and has determined that the application is acceptable for processing and no additional information or studies are needed to prepare the Commission's environmental assessment (EA). Comments, as indicated above, are being requested from interested parties. Any comments received will be addressed in a draft EA to be issued by the Commission in early 2000. The applicant will have 45 days following the end of the comment period to respond to these comments, or may elect to seek a waiver of this deadline.

l. *Description of Project:* The project consists of the following: *The Moore Development*, located 283.5 miles from the mouth of the Connecticut River, consists of: an 11-mile-long, 3,490 surface-acre reservoir with 114,176 acre-feet storage capacity at 809.0 feet mean sea level (msl); an earth and concrete gravity dam with a length of 2,920 feet and a max. height of 178 feet; a 373-foot-long concrete spillway with 15-foot-wide by 20-foot-high sluice gate, four 50-foot bays of 17-foot-high stanchions, and three bays of 36-foot-wide by 30-foot high Taintor gates; four steel penstocks each 296 feet long; and a powerhouse with four Francis type turbines at a combined rating of 225,600 hp at a design head of 150 feet, for a plant capability of 191,960 kilowatts (kW). *The Comerford Development*, located 275.2 miles from the mouth of the Connecticut River, consists of: an 8-mile-long, 1,093 surface-acre reservoir with 29,356 acre-feet storage capacity at 650.0 feet msl; an earth and concrete gravity dam with a length of 2,253 feet and a max. height of 170 feet; and 850-foot-long concrete spillway with six 7-foot-wide by 9-foot-high sluice gates, four bays of 8-foot-high flashboards and seven 10-foot-high stanchion bays; four steel penstocks each 150-feet-long; and a powerhouse with four Francis type turbines at combined rating of 216,800 hp at a design head of 180 feet, for a plant capability of 163,960 kW. *The McIndoes Development*, located 268.2 miles from the mouth of the Connecticut River, consists of: a 5-mile-long, 543 surface-acre reservoir with 4,581 acre-feet storage capacity at 454.0 feet msl; a concrete gravity dam with a length of 730 feet and a max. height of 25 feet; a 520-foot-long concrete spillway with a 12-foot-wide by 13-foot-high skimmer gate, three 24-foot-wide by 25-foot-high Taintor gates, a 300-foot-long spillway flashboard section with 60-foot flashboards, and two 50-foot-wide by 18-foot-high stanchion bays; four steel penstocks each 150-feet-long; and a powerhouse with four Kaplan type turbines at combined rating of 3,800 hp at a design head of 29 feet, for a plant capability of 13,000 kW.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedures, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline data for the particular application and APEA.

o. Filing and Service of Responsive Documents—The Commission is requesting comments, recommendations, terms and conditions, prescriptions, and reply comments.

The Commission directs, pursuant to 18 CFR 4.34(b) of the regulations, that all comments, recommendations, terms and conditions, and prescriptions concerning the application and APEA be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

p. All filings must: (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' ''PRESCRIPTIONS,'' or ''REPLY COMMENTS;'' (2) set forth in the heading the name of the applicant and the project number of the application and APEA to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application and APEA directly from the applicant. Any of these documents must be filed by providing

the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to: Director, Division of Licensing and Compliance, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–25775 Filed 10–4–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6452–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Applications for NPDES Permits and the Sewage Sludge Management Permits

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 following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Applications for NPDES Discharge Permits and the Sewage Sludge Management Permits, OMB Control No. 2040–0086, EPA ICR No. 0226.15, which expires on November 30, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@.epa.gov. You may download a copy of the ICR from the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0226.15.

SUPPLEMENTARY INFORMATION:

Title: Applications for NPDES Discharge Permits and the Sewage Sludge Management Permits, (OMB Control No. 2040–0086; EPA ICR No. 0226.15) which expires on 11/30/99.

Abstract: This ICR calculates the burden and costs associated with permit applications for National Pollutant Discharge Elimination System (NPDES) discharges and sewage sludge management activities. It is an update of the ICR, and also integrates and updates application requirements discussed in one amendment ICR approved by OMB, ''National Pollutant Discharge Elimination System Permit Application Requirements—Form 2A and 2S (Final Rule),'' OMB Control No. 2040–0086, ICR No. 0226.14, approved January 13, 1999. EPA uses the data contained in applications and supplemental information requests to set appropriate permit conditions, issue permits, and assess permit compliance. EPA maintains national applications information in databases, which assist permit writers in determining permit conditions. Depending on the application form they are using, applicants may be required to supply information about their facilities, discharges, treatment systems, sewage sludge use and disposal practices, pollutant sampling data, or other relevant information. In its burden and cost calculations, this ICR includes requests for information supplemental to permit applications. Application information is necessary to obtain an NPDES or sewage sludge permit. This ICR also includes the development of a storm water pollution prevention plan as part of the requirements for the multi-sector general permit, for industrial activities. The average time for this activity is 80 hours and there are an estimated 16,350 respondents. The estimated annualized burden is 1,307,963 hours. This is a newly covered area under this ICR and represents the major portion of the increase in burden.

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 04/23/98 (63 FR 20182); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 23.4 hours per response (combining reporting and recordkeeping). 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.

Respondents/Affected Entities: Publicly owned treatment works (POTWs), privately owned treatment works, new and existing industrial manufacturing and commercial dischargers, storm water dischargers, treatment works treating domestic sewage (TWTDS), and States and territories.

Estimated Number of Respondents: 88,209.

Frequency of Response: varies.

Estimated Total Annual Hour Burden: 2,038,694 hours.

Estimated Total Annualized Cost Burden (non-labor costs): $1,004,710.

Send comments 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 to the following addresses. Please refer to EPA ICR No. 0226.15 and OMB Control No. 2040–0086 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: September 29, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–25836 Filed 10–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CO–001–0036; AD–FRL–6451–7]

Approval and Promulgation of State Implementation Plans; Call for Visibility SIP Revision for Colorado Class I Visibility Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Information notice.

SUMMARY: EPA hereby gives notice that in a September 22, 1999 letter it notified the Governor of Colorado that the Colorado State Implementation Plan (SIP) for Class I Visibility Protection (Visibility SIP) is substantially inadequate to make reasonable progress toward the National visibility goal, as specified in section 169A(a)(1) of the Clean Air Act. Specifically, Colorado's Visibility SIP is substantially inadequate to remedy existing and prevent future man-made visibility impairment in Mt. Zirkel Wilderness Area and must be revised.

DATES: A revision to the Colorado Visibility SIP is due within 12 months of the date of EPA's letter to the Governor.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Air and Radiation Program, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 312–6449.

SUPPLEMENTARY INFORMATION:

I. Background

Section 169A of the Clean Air Act (CAA), 42 U.S.C. 7491, establishes as a National goal the prevention of any future, and the remedying of any existing, anthropogenic visibility impairment in mandatory Class I Federal areas [1] (referred to herein as the National visibility goal). Section 169A calls for EPA to, among other things, issue regulations to assure reasonable progress toward meeting the National visibility goal, including requiring each State with a mandatory Class I Federal area to revise its SIP to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the National visibility goal. CAA section 169A(b)(2). Section 110(a)(2)(J) of the CAA, 42 U.S.C. 7410(a)(2)(J), similarly requires SIPs to meet the visibility protection requirements of the CAA.

EPA promulgated regulations that require affected States to, among other things, (1) coordinate development of SIPs with appropriate Federal Land Managers (FLMs); (2) develop a program to assess and remedy visibility impairment from new and existing sources; and (3) develop a long-term strategy to assure reasonable progress toward the National visibility goal. See 45 FR 80084, December 2, 1980 (codified at 40 CFR 51.300–51.307). The regulations provide for the remedying of visibility impairment that is reasonably attributable to a single existing stationary facility or small group of existing stationary facilities.

The Colorado SIP for Class I Visibility Protection was approved by EPA on August 12, 1988 (53 FR 30428). EPA approved subsequent revisions to this SIP on October 11, 1994 and January 16, 1997 (see 59 FR 51376 and 62 FR 2305, respectively).

On July 14, 1993, the U.S. Forest Service (USFS) certified visibility impairment in Mt. Zirkel Wilderness Area, a mandatory Class I Federal area, and named the Hayden and Craig Generating Stations in the Yampa Valley of northwest Colorado as suspected sources. The USFS is the FLM for Mt. Zirkel Wilderness Area. Although the State resolved the certification of impairment with respect to Hayden Station (see 62 FR 2305, January 16, 1997), the State has not resolved the certification for Craig Generating Station.

II. Finding of Inadequacy

In its September 22, 1999 letter to the Governor of Colorado, EPA found [2] that the Colorado Visibility SIP is substantially inadequate to make reasonable progress toward the National visibility goal, as specified in section 169A(a)(1) of the CAA, 42 U.S.C. 7491(a)(1). Specifically, Colorado's Visibility SIP is substantially inadequate to remedy existing and prevent future man-made visibility impairment in Mt. Zirkel Wilderness Area. EPA believes that a Best Available Retrofit Technology (BART) limit is warranted for Craig Generating Station and that the current SIP is deficient because it does not include such a BART or BART equivalent limit.

III. Call for SIP Revision

The finding of SIP inadequacy requires Colorado to submit a SIP revision no later than 12 months from the date of EPA's letter to the Governor. To ensure that the SIP deadline is met, EPA requested the State to submit an action plan for the development of the SIP revision within 30 days from receipt of EPA's letter to the Governor. Any control strategies adopted and implemented as part of this SIP revision must provide for the remedying of existing and the prevention of future man-made visibility impairment in Mt. Zirkel Wilderness Area resulting from Craig Generating Station's emissions.

IV. EPA Action

The finding of inadequacy and call for a SIP revision as set out in the September 22, 1999 letter to the Governor do not constitute a final agency action that is ripe for judicial review. EPA's action is a preliminary step in an ongoing administrative process. See *Greater Cincinnati Chamber of Commerce* v. *U.S. EPA*, 879 F.2d 1379 (6th Cir. 1989). A final agency action will occur when EPA makes a binding determination regarding the State's response to the SIP call. This would occur, for example, if EPA either approves or disapproves the SIP submittal or promulgates a Federal Implementation Plan if the State does not submit an adequate SIP revision. (See sections 110(c) and 110(k) of the Clean Air Act.) Either action would become final only after EPA provides public notice and an opportunity for public comment.

A technical support document (TSD) is available from the contact person listed above. The TSD discusses in more detail the Mt. Zirkel Wilderness Area certification of visibility impairment issued by the USFS in 1993, technical studies related to the Craig Generating Station's contribution to such impairment and available control technology, the SIP call and legal authority, and the SIP revision schedule.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Sulfur oxides.

Authority: Sections 101, 107, 110, 116 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7401, 7407, 7410, 7416 and 7610(a)).

Dated: September 23, 1999.

William P. Yellowtail,

Regional Administrator, Region VIII.

[FR Doc. 99–25834 Filed 10–4–99; 8:45 am]

BILLING CODE 6560–50–P

[1] Mandatory Class I Federal areas include international parks, national wilderness areas greater than five thousand acres in size, national memorial parks greater than five thousand acres in size, and national parks greater than six thousand acres in size, as described in section (162)(a) of the CAA (42 U.S.C. 7472(a)). Each mandatory Class I Federal area is the responsibility of a ''Federal land manager'' (FLM), the Secretary of the department with authority over such lands. See section 302(i) of the CAA, 42 U.S.C. 7602(i).

[2] The finding was made pursuant to section 110(k)(5) of the Clean Air Act, 42 U.S.C. 7410(k)(5).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6451–6]

National Drinking Water Advisory Council, Small Systems Implementation Working Group; Notice of Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of the Small Systems Implementation Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*), will be held on October 20–21, 1999 at the Hilton Albuquerque, 1901 University Boulevard, NE Albuquerque, NM 87102. The meeting will begin at 8:30 p.m. and conclude at 5:00 p.m. on October 20, and will begin at 8:30 a.m. and conclude at 4:00 p.m. on October 21. The meeting is open to the public to observe, but seating will be limited.

The purpose of this meeting is to discuss possible recommendations to the full National Drinking Water Advisory Council. Possible recommendations are being considered in seven issue areas: Unsustainable Systems; Mechanisms for Sharing the Cost of Water Service; Water System Institutional Structures; Regulatory Institutional Structures and Processes; Training and Education for Managing Bodies; Public Awareness; and, State Capacity Development Strategies.

For more information, please contact Peter E. Shanaghan, Designated Federal Officer, Small Systems Implementation Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4606), 401 M Street, S.W., Washington, D.C. 20460. The telephone number is 202–260–5813 and the email address is shanaghan.peter@epamail.epa.gov.

Dated: September 23, 1999.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 99–25837 Filed 10–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6451–9]

National Wastewater Management Excellence Awards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; announcement of EPA's 1999 National Wastewater Management Excellence Awards Presentation at the Water Environment Federation's annual conference.

SUMMARY: The U.S. Environmental Protection will recognize municipalities and industries for outstanding and innovative technological achievements in wastewater treatment and pollution abatement programs at the annual National Wastewater Management Excellence Awards ceremony during the Water Environment Federation's (WEF) annual conference in New Orleans, Louisiana. An inscribed plaque will be presented to first and second place national award winners for projects or programs in operations and maintenance, beneficial use of biosolids, pretreatment, storm water management and combined sewer overflow controls. This action also announces the 1999 national awards winners.

DATES: Monday, October 11, 1999, 11:30 am to 1:00 pm.

ADDRESSES: The National awards presentation ceremony will be held at the Ernest N. Morial Convention Center, 2 Poydras Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Maria E. Campbell at the U.S. Environmental Protection Agency, Office of Wastewater Management, Municipal Assistance Branch, 401 M Street, SW, (4204), Washington, D.C. 20460, (202) 260–5815, or campbell.maria@epa.gov.

SUPPLEMENTARY INFORMATION: The National Wastewater Management Excellence Awards program is authorized under sec. 501(a) and (e) of the Clean Water Act. The awards program provides national recognition and encourages public support of programs aimed at protecting the public's health and safety and the nation's water quality. State water pollution control agencies and EPA regional offices make recommendations to headquarters for the national awards. Nominees are in compliance with applicable water quality requirements or have a satisfactory record with respect to environmental quality. Review panels select national award winners based on criteria established for each program. Municipalities and industries are recognized for their demonstrated achievements through the following:

(1) Outstanding operations and maintenance practices at publicly owned wastewater treatment facilities;

(2) Exemplary biosolids operating projects, technology development, research and public acceptance efforts;

(3) Municipal implementation and enforcement of local pretreatment programs;

(4) Implementing outstanding, innovative and cost-effective storm water control programs; and

(5) implementing combined sewer overflow control programs.

Winners and categories for the EPA's 1999 National Wastewater Management Excellence Awards program are as follows:

	Category
Operations and Maintenance Awards	
First Place:	
York City WWTP, York, Pennsylvania	Large Advanced Category.
Sweetwater Creek WPCP, Douglasville, Georgia	Medium Advanced Category.
Elk Mound WWTP, Village of Elk Mound, Wisconsin	Small Advanced Category.
Appleton WWTP, Appleton, Wisconsin	Large Secondary Category.
Escanaba WWTP, Escanaba, Michigan	Medium Secondary Category.
Oak Park Conservancy District, Jeffersonville, Indiana	Small Secondary Category.
Edgartown WWTF, Town of Edgartown, Massachusetts	Small Non-Discharging Category.
Town of Cedaredge WWTP, Cedaredge, Colorado	Most Improved Plant.
Jon B. Evans, Town of Carbondale, Colorado, Department of Utilities, Section 104(g) Trainer for Cedaredge WWTP	
Second Place:	
South Columbus Water Resource Facility, Columbus, Georgia	Large Advanced Category.
Westborough WWTF, Westborough, Massachusetts	Medium Advanced Category.
Inland Empire Utilities Agency-Regional Plant #2, Chino, California	Medium Advanced Category.

	Category
Swedesboro WWTP, Borough of Swedesboro, New Jersey	Small Advanced Category.
Brattleboro WWTP, Brattleboro, Vermont	Medium Secondary Category.
V. A. Togus WWTF, Togus, Maine	Small Secondary Category.
Breckenridge Sanitation District, South, Blue River WWTP, Breckenridge, Colorado	Small Non-Discharging Category.
Lyndonville WWTF, Lyndon, Vermont	Most Improved Plant (tie).
Paul Olander, Vermont Department of Environmental Conservation, Section 104(g), Trainer for Lyndonville WWTF	
Canal Winchester WWTP, Canal Winchester, Ohio	Most Improved Plant (tie).
Ohio EPA Compliance Assistance Unit, Section 104(g) Trainers for Canal Winchester WWTP	
Beneficial Use of Biosolids Awards	
First Place:	
Milwaukee Metropolitan Sewerage District and United Water Services Milwaukee, LLC, Milwaukee, Wisconsin.	Large Operating Projects.
Lower Creek Water Reclamation Facility, City of Lenoir, North Carolina	Small Operating Projects.
Littleton/Englewood Wastewater Treatment Facility, Englewood, Colorado and Colorado State University, Fort Collins, Colorado.	Research Activities.
Natures Blend Water Pollution Control Center, City of Warren, Ohio	Public Acceptance (Municipal).
Prowers County, Land Application Program, Parker Ag Services, LLC, Limon, Colorado, EPIC of Denville, New Jersey, and New York City Dept. of Environmental Protection.	Public Acceptance (Other).
Second Place:	
Bureau of Environmental Services, City of Portland, Oregon	Large Operating Projects.
Water Resources Dept of Public Works, City of Washington, North Carolina and Synagro, Southeast.	Small Operating Projects.
Honorable Mention:	
Village Creek Wastewater Treatment Plant, City of Fort Worth, Texas	Large Operating Projects.
Pepper's Ferry Regional Wastewater Treatment Authority, Radford, Virginia	Small Operating Projects.
Special Award:	
Oregon Association of Clean Water Agencies and Oregon State University Extension Service	For Development of an Outstanding Biosolids Education and Training Program
Pretreatment Awards	
First Place:	
City of Wilsonville, Oregon	0–10 Significant Industrial Users (SIUs).
South Valley Water Reclamation Facility, West Jordan, Utah	11–20 SIUs.
Littleton/Englewood WWTP, Englewood, Colorado	21 to 50 SIUs.
Littleton/Englewood WWTP, Littleton, Colorado	21 to 50 SIUs.
City of Albuquerque, New Mexico	51 to 100 SIUs.
Metropolitan St. Louis Sewer District, St. Louis, Missouri	Greater than 100 SIUs.
Second Place:	
Merrimack WWTF, Merrimack, New Hampshire	0–10 SIUs.
City of San Marcos, Texas	11–20 SIUs.
City of Elkhart, Indiana	21 to 50 SIUs.
Storm Water Management Awards	
First Place:	
Tanners Lake Water Quality Improvement Project, Ramsey-Washington Metro Watershed District, Oakdale, Minnesota.	Municipal.
Ciba Specialty Chemicals, Newport, Delaware	Industrial.
Second Place:	
Lowes Creek Storm Water Demonstration Project, Eau Claire, Wisconsin	Municipal.
Anheuser-Busch Brewery, Columbus, Ohio	Industrial (tie).
Coca Cola USA Fountain, Columbus, Ohio	Industrial (tie).
Combined Sewer Overflow Control Awards:	
First Place:	
Department of Public Utilities, City of Richmond, Virginia	
Second Place:	
City of Auburn, New York (tie)	
Columbus Water Works (tie), Columbus, Georgia	

References: 62 FR 39239, Jul. 22, 1997.

Authority: 33 U.S.C. 1361(a) and (e).

Dated: September 29, 1999.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 99–25838 Filed 10–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6451–3]

Notice of Establishment of Point of Contact for Small Business Concerns Regarding Compliance Problems Arising from Year 2000 (Y2K) Failures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 18 of the Y2K Act (P.L. 106–37) provides for suspension of penalties for certain Year 2000 (Y2K) failures by small business concerns. Section 18(b) requires each Federal agency to establish a point of contact to act as a liaison between the agency and small business concerns with respect to problems arising out of Y2K failures and compliance with Federal rules and regulations. The Environmental Protection Agency (EPA) is naming Ginger Gotliffe as its contact for small business concerns. In addition, EPA is naming Gary Jonesi as its contact for larger businesses who have Y2K compliance questions, or any business that has questions about application of EPA's Y2K enforcement policy.

ADDRESSES: Ginger Gotliffe, Office of Enforcement and Compliance Assurance (OECA) , U.S. Environmental Protection Agency, Mail Code 2224A, 401 M Street, SW, Washington, DC 20460, phone 202–574–7072, e-mail *gotliffe.ginger@epa.gov*. Gary Jonesi, Office of Enforcement and Compliance Assurance (OECA), U.S. Environmental Protection Agency, Mail Code 2241A, 401 M Street, SW, Washington, DC 20460, phone 202–564–4002, e-mail *jonesi.gary@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Ginger Gotliffe or Mr. Gary Jonesi, at addresses above.

SUPPLEMENTARY INFORMATION: On July 20, 1999, President Clinton signed the ''Y2K Act,'' which generally establishes special substantive and procedural rules for commercial litigation related to Y2K computer failures. Under section 18 of the Y2K Act, Federal agencies shall waive civil monetary penalties for first-time violations by a small business concern of a federally enforceable rule or regulation caused by a Y2K failure occurring through December 31, 2000, provided that certain conditions are met. For purposes of the Y2K Act, a ''small business concern'' is defined as an unincorporated business, partnership, corporation, association, or organization, with fewer than 50 full-time employees. The law also provides an exception to the waiver of civil penalties in certain circumstances, for example, if the violation resulted in actual harm or creates an imminent threat to public health, safety, or the environment.

EPA issued a Y2K Enforcement Policy on November 30, 1998. The policy was designed to encourage prompt testing of computer-related equipment to ensure that environmental compliance is not impaired by Y2K failures. Under the policy (published on the Internet at *www.epa.gov/year2000* and at 64 FR 11881, March 10, 1999) EPA states that it will waive 100% of the civil penalties that might otherwise apply, and will recommend against criminal prosecution, for environmental violations caused by specific tests designed to identify and eliminate Y2K-related malfunctions. The policy applies to testing-related violations disclosed to EPA by February 1, 2000, subject to certain conditions to ensure protection of public health and the environment.

Dated: September 28, 1999.

Michael Stahl,

Acting Director, Office of Compliance.

[FR Doc. 99–25777 Filed 10–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 6451–4]

Guam: Adequacy Determination of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination to fully approve the adequacy of the Guam Municipal Solid Waste Permitting Program, public hearing, and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945(1)(B), requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs), which may receive hazardous household waste or small quantity generator hazardous waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA Section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C), requires the Environmental Protection Agency (EPA) to determine whether states have adequate ''permit'' programs for MSWLFs, but does not mandate issuance of a rule for such determinations. Approved State permit programs provide for interaction between the State and the Owner/Operator regarding site-specific permit conditions. Only those owners/operators located in States with approved permit programs can use the site specific flexibilities provided by 40 CFR part 258 to the extent the State permit program allows such flexibility. EPA notes that, regardless of the approval status of any facility, the federal landfill criteria shall apply to all permitted and unpermitted MSWLF facilities.

Guam is defined as a ''State'' in 40 CFR part 258.2. Guam has applied for a determination of adequacy under Section 4005(c)(1)(C) of RCRA, 42 U.S.C. 6945(c)(1)(C). EPA Region IX has reviewed Guam's MSWLF permit program application and has made a tentative determination that all portions of Guam's MSWLF permit program are adequate to assure compliance with the revised MSWLF Criteria. Guam's application for program adequacy determination is available for public review and comment at the place(s) listed in the **ADDRESSES** section below during regular office hours.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State's MSWLF permit program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of persons express interest in participating in a hearing by writing to the Region IX Solid Waste Program or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing in Tiyan, Guam. The Region will notify all persons who submit comments on this notice if it appears that there is sufficient public interest to warrant a hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the **CONTACTS** section below.

DATES: All comments on Guam's application for a determination of adequacy must be received by the close of business on November 1, 1999. If there is sufficient interest, a public hearing will be held in Tiyan, Guam at least 45 days from the date of publication of this notice. The State will

participate in the public hearing, if held by EPA on this subject.

ADDRESSES: Written comments should be sent to Ms. Heidi Hall, Chief, Solid Waste Program, mail code WST–7, EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. The public hearing, if held, will be held at the Guam Environmental Protection Agency's Main Conference Room, Building 15–6101 Mariner Avenue, Tiyan, Guam. Copies of Guam's application for adequacy determination are available at the following address for inspection and copying: Guam Environmental Protection Agency, Calibration Laboratory Building, 15–6101 Mariner Ave. Tiyan, Barrigada, Guam between the hours of 8:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: EPA Region IX 75 Hawthorne Street, San Francisco, California 94105 attention Ms. Beth Godfrey, mail code WST–7, telephone 415 744–2095.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under 40 CFR part 258. Subtitle D also requires in Section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C), that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfil this requirement, the Agency has promulgated the Final State Implementation Rule (SIR). The rule specifies the requirements which State programs must satisfy to be determined adequate.

EPA interprets the requirement for states to develop ''adequate'' programs for permits or other forms of prior approval and conditions (for example license to operate) to impose several minimum requirements. First, each State must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State must have the authority to issue a permit or other notice of prior approval and conditions to all new and existing MSWLFs in it jurisdiction. The State also must provide for public participation in permit issuance and enforcement, as required in Section 7004(b) of RCRA, 42 U.S.C. 6974(b). Finally, the State must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State has submitted an ''adequate'' program based on the interpretation outlined above. EPA expects States to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. Guam

On August 24, 1998 EPA Region IX received Guam's final MSWLF Permit Program application for adequacy determination. Region IX reviewed the final application, submitted comments to Guam, and requested additional information about the state program implementation. Guam addressed EPA's comments, provided the requested additional information, and submitted a revised final application for adequacy determination on June 16, 1999. Region IX has reviewed Guam's revised application and has tentatively determined that all portions of Guam's MSWLF program meet all the requirements necessary to qualify for full program approval and ensures compliance with the revised Federal Criteria.

The public may submit written comments on EPA's tentative determination until November 1, 1999. Copies of Guam's application are available for inspection and copying at the location indicated in the **ADDRESSES** section of this notice.

To ensure full compliance with the Federal Criteria, Guam has revised its current MSWLF permitting requirements by amendment of the Solid Waste Disposal Rules and Regulations. This document has incorporated those requirements from the federal criteria not found in Guam's existing MSWLF program and are applicable to all existing MSWLFs and to all MSWLF permit applications. Guam will implement its MSWLF permit program through enforceable permit conditions.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for Guam's program. EPA will make a final decision on approval of Guam's program and will give notice of the final determination in the **Federal Register**. The notice shall include a summary of the reasons for the final determination and a response to all significant comments.

Section 4005(a) of RCRA, 42 U.S.C. 6945(a), provides that citizens may use the citizen suit provisions of Section 7002 of RCRA, 42 U.S.C. 6972, to enforce the Federal Criteria in 40 CFR part 258 independent of any State enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Section 4005 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6946.

Dated: September 21, 1999.

Felicia Marcus,

Regional Administrator.

[FR Doc. 99–25840 Filed 10–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6451–5]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), 42 U.S.C. 9601–9675,

notice is hereby given that a proposed purchaser agreement (''Purchaser Agreement'') associated with the Boyles Galvanizing Site in Philadelphia, Pennsylvania was executed by the Environmental Protection Agency and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreement is inappropriate, improper, or inadequate. The Purchaser Agreement would resolve certain potential EPA claims under Section 107 of CERCLA, 42 U.S.C. 9607, against the New Kensington Community Development Corporation (''Purchaser''). The settlement would require the Purchaser to, among other things, deliver the sum of $64,800 of the purchase price to the United States at the time of closing and abide by certain land use restrictions intended to protect public health and welfare.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Purchaser Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before November 4, 1999.

ADDRESSES: *Availability:* The proposed Purchaser Agreement and additional background information relating to the proposed Purchaser Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Purchaser Agreement may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RC00), 1650 Arch Street Philadelphia, PA 19103. Comments should reference the ''Boyles Galvanizing Site Prospective Purchaser Agreement'' and ''EPA Docket No. III–99–006–DC,'' and should be forwarded to Suzanne Canning at the above address or through electronic mail at ''canning.suzanne@epa.gov.''

FOR FURTHER INFORMATION CONTACT: Andrew S. Goldman (3RC41), Sr. Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2487.

Dated: September 28, 1999.

Abraham Ferdas,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 99–25841 Filed 10–4–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3140–EM]

California; Amendment No. 2 to Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of California, (FEMA–3140–EM), dated September 1, 1999, and related determinations.

EFFECTIVE DATE: September 24, 1999

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of California is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of September 1, 1999:

Trinity County for emergency protective measures, including the limited removal of debris which poses a health and safety hazard to the general public, as authorized under Title V. This assistance excludes regular time costs for subgrantees regular employees.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–25819 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1297–DR]

Delaware; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Delaware (FEMA–1297–DR), dated September 21, 1999, and related determinations.

EFFECTIVE DATE: September 21, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 21, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Delaware, resulting from Hurricane Floyd on September 15–17, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Delaware.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Steven A. Adukaitis of the Federal Emergency Management

Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Delaware to have been affected adversely by this declared major disaster:

New Castle County for Individual Assistance and Public Assistance.

All counties within the State of Delaware are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99–25825 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1295–DR]

New Jersey; Amendment No. 2 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 New Jersey, (FEMA–1295–DR), dated September 18, 1999, and related determinations.

EFFECTIVE DATE: September 28, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New Jersey 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 September 18, 1999:

Hunterdon County 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. 99–25817 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1295–DR]

New Jersey; Amendment No. 3 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 New Jersey (FEMA–1295-DR), dated September 18, 1999, and related determinations.

EFFECTIVE DATE: September 18, 1999

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 18, 1999.

(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. 99–25818 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3148–EM]

New Jersey; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of New Jersey (FEMA–3148–EM), dated September 17, 1999, and related determinations.

EFFECTIVE DATE: September 18, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 18, 1999.

(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. 99–25821 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1296–DR]

New York; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York, (FEMA–1296–DR), dated September 19, 1999, and related determinations.

EFFECTIVE DATE: September 23, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New York 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 September 19, 1999:

Essex County for Individual Assistance and Public Assistance.

The counties of Orange, Putnam Rockland, and Westchester Counties for Categories C through G under the Public Assistance program (already designated for Categories A and B and the Individual Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–25823 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1294–DR]

Pennsylvania; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania, (FEMA–1294–DR), dated September 18, 1999, and related determinations.

EFFECTIVE DATE: September 28, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Pennsylvania is hereby amended to include Categories C–G under the Public Assistance program in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 1999:

Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties for Categories C–G under the Public Assistance program (already designated for Individual Assistance, and debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–25816 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1299–DR]

South Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–1299–DR), dated September 21, 1999, and related determinations.

EFFECTIVE DATE: September 21, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 21, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of South Carolina, resulting from Hurricane Floyd beginning on September 14, 1999, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of South Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, including direct Federal assistance at 75 percent Federal funding, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Lawrence L. Bailey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Carolina to have been affected adversely by this declared major disaster:

Charleston, Georgetown, and Horry Counties for Individual Assistance.

Beaufort, Berkeley, Charleston, Colleton, Georgetown, Horry, Jasper, and Marion Counties for Public Assistance.

All counties within the State of South Carolina are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–25824 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1287–DR]

Texas; Amendment No. 6 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–1287–DR), dated August 22, 1999, and related determinations.

EFFECTIVE DATE: September 24, 1999

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 22, 1999:

Jim Wells County for Categories C through G under the Public Assistance program (previously designated for Individual Assistance and Categories A and B under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–25822 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1293–DR]

Commonwealth of Virginia; Amendment No. 2 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 Commonwealth of Virginia, (FEMA–1293–DR), dated September 18, 1999, and related determinations.

EFFECTIVE DATE: September 22, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia 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 September 18, 1999:

The independent cities of Chesapeake City and Emporia City and the counties of Chestfield, Greenville, King and Queen, and Middlesex for Individual Assistance.

The independent cities of Chesapeake City and Colonial Heights City, and the counties of Brunswick, Caroline, Dinwiddie, Essex, Gloucester, Greenville, King and Queen, King William, Mecklenburg, and Middlesex for Public 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 Counselling; 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. 99–25810 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1293–DR]

Commonwealth of Virginia; Amendment No. 3 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 Commonwealth of Virginia, (FEMA–1293–DR), dated September 18, 1999, and related determinations.

EFFECTIVE DATE: September 23, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia 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 September 18, 1999:

The independent cities of Richmond City, Suffolk City, and Williamsburg City and the counties of Dinwiddie, Gloucester, and Halifax for Individual Assistance.

The independent cities of Emporia City and Petersburg City, and Chesterfield County for Public 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. 99–25813 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1293–DR]

Virginia; Amendment No. 4 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 Commonwealth of Virginia (FEMA–1293–DR), dated September 18, 1999, and related determinations.

EFFECTIVE DATE: September 26, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 26, 1999.

(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. 99–25814 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1293–DR]

Virginia; Amendment No. 5 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 Commonwealth of Virginia, (FEMA–1293–DR), dated September 18, 1999, and related determinations.

EFFECTIVE DATE: September 28, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia 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 September 18, 1999:

Mathews County for Individual Assistance and Public Assistance.

Northumberland County for Public Assistance (already designated for Individual Assistance.)

The counties of Charles City, King George, Lancaster, Lunenberg, and Richmond for Public 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. 99–25815 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3147–EM]

Virginia; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the Commonwealth of Virginia (FEMA–3147–EM), dated September 16, 1999, and related determinations.

EFFECTIVE DATE: September 26, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 26, 1999.

(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. 99–25820 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Cooperating Technical Communities

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of Cooperating Technical Communities flood hazard mapping initiative.

SUMMARY: We (FEMA) give notice of the Cooperating Technical Communities initiative that will recognize and encourage participation by states, regional agencies, and communities in the flood hazard mapping process.

DATES: Pilot projects are ongoing.

FOR FURTHER INFORMATION CONTACT: Your FEMA Regional Cooperating Technical Communities Coordinator. We list contact names for the coordinators under Section 5 of this document.

SUPPLEMENTARY INFORMATION:

1. Background

FEMA administers the National Flood Insurance Program (NFIP) and under § 1360 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4101), we establish and update flood-risk zone data in floodplain areas. In the identification of flood-prone areas, we may consult with, receive information from, and enter into agreements or other arrangements with the head of any State, regional, or local agency in order to identify these floodplain areas.

We are implementing the Cooperating Technical Communities (CTC) concept as part of our Flood Map Modernization plan (*http://www.fema.gov/library/mapmod.pdf*). The CTC initiative will formally recognize and encourage the ongoing contributions that our mapping partners—States, regional agencies, and communities—make in assisting us in providing timely and accurate flood hazard information. The participating entity will enter into a partnership agreement with us to develop or maintain all or a component of its flood hazard maps.

CTC partnerships will maximize the effectiveness of the limited local and Federal funding available for flood mapping, while maintaining consistent national standards. Through these partnerships, the integration of locally-funded or developed flood and mapping data in the flood mapping process will enable contributing partners to expand the scope of our flood mapping efforts. We expect that this will result in enhanced responsibility for the maps by the partners and, in turn, heightened local awareness of flood risks, more effective floodplain management, and more accurate maps. The Cooperating Technical Communities initiative includes both locally-funded and FEMA-funded activities.

Under the initiative, the partner will enter a general overall agreement (CTC Agreement) with us that recognizes the fundamental importance of flood hazard identification, as well as flood insurance and floodplain management. Then, as the CTC partner and we identify specific flood mapping activities to undertake, we and the CTC partner will develop and enter into Mapping Activity Agreements under the umbrella of the overall CTC Agreement.

We envision that most Mapping Activity Agreements will be collaborative efforts where both the CTC partner and FEMA contribute data and units of work to maximize the extent, accuracy, and utility of flood studies to best meet local and Federal needs, while minimizing costs for all parties. Federal

funding will be limited even if we can allocate supplemental map modernization funding. In any event, we will allocate funding within the context of our flood study prioritization process.

We will consider Fiscal Years 1999 and 2000 as pilot years for this initiative. Initial Guidance is available at *http://www.fema.go/mit/tsd/CTC—main.htm*. We anticipate that updated guidance will be available in Fiscal Year 2000.

2. Availability of Fiscal Year 1999 Funds

We set aside $400,000 ($40,000 per Region) for FEMA-funded CTC activities in Fiscal Year 1999. We identified partners as potential recipients of funding through CTC agreements for this pilot year. We based the selection on floodplain mapping needs and on the partners' interest, contributions, and their capability to perform the types of activities that we identified for the pilot effort.

3. Activities

All of the activities listed below contain the following benefits for both the CTC partner and for FEMA:

- Local capabilities in hazard identification and risk assessment—the building blocks for disaster resistance—will be enhanced through FEMA technical assistance, experience, standards, and funding;
- The data, methods, and mapping used for local, regional, and state permitting processes will also be used for NFIP mapping, to the extent possible;
- Close coordination and involvement in the flood hazard mapping process will result in more efficient local floodplain management by the CTC partners;
- The program has the potential to interject a tailored, local focus into a national program where unique conditions may exist that necessitate special approaches to flood hazard identification.
- By incorporating local knowledge and expertise, FEMA's National Flood Insurance Program flood hazard maps will be more accurate and can be updated faster;

Mapping Activity Agreements will support the development of flood hazard mapping or a component of the production and maintenance of flood hazard mapping. FEMA and the CTC partner will collaborate on these mapping activities. FEMA may provide technical assistance, support, and data to the CTC partner. In some cases, funding may also be available. The following mapping activities may receive funding in Fiscal Year 1999 through a cooperative agreement with FEMA:

Activity	Partner	Description
Refinement of Approximate Zone A Boundaries.	Community/Regional/State Agency	The CTC partner works with FEMA to perform analyses to refine Zone A boundaries. Emphasis placed on automation techniques.
Hydrologic & Hydraulic (H&H) Modeling and Floodplain Mapping.	Community/Regional/State Agency	The CTC partner develops digital engineering data and floodplain mapping using GIS-based or traditional H&H modeling.
DFIRM Preparation.	Community/Regional/State Agency	The CTC partner digitizes the effective FIRM into a DFIRM.
Redelineation of Detailed Flood Hazard Information Using Updated Topographic Data.	Community/regional/State Agency	The CTC partner redelineates the effective flood hazard information using more up-to-date topographic data. GIS is used, where available.
Analysis of Community Mapping Needs to support FEMA's Mapping Needs Update Support System (MNUSS).	Regional/State Agency	The CTC partner performs a detailed community-by-community investigation and assessment of every NFIP community's mapping needs, including flood data updates, map maintenance, and includes unmapped communities.

While we provide no funding to CTC partners for the following mapping activities, we may provide technical assistance, support, and data to the CTC partner:

Activity	Partner	Description
Base Map Inventory	Regional or State Agency	The CTC partner performs an investigation and provides an inventory of base maps meeting FEMA's specifications for NFIP communities in the state.
Digital Base Map Data Sharing.	Community/Regional/ State Agency	The CTC partner supplies a base map for DFIRM production. The base map will comply with FEMA's minimum accuracy requirements and be distributable by FEMA to the public (hardcopy and electronic formats).
DFIRM Maintenance	Community/Regional/State Agency	The CTC partner assumes responsibility for long-term, periodic maintenance of the DFIRM.
Hydrologic and Hydraulic Review Agreement	Community/ Regional/State Agency	The CTC partner evaluates H&H studies prepared for flood data updates and/or 44 CFR Part 65 map revisions. The review will focus on compliance with the technical and regulatory requirements contained in FEMA's various flood mapping guidelines and specifications, the pertinent NFIP flood mapping regulations, as well as standard accepted engineering practices.

Activity	Partner	Description
Technical Standards Agreement	Community/ Regional/State Agency	Adoption of specific technical standards or processes appropriate for local conditions for NFIP flood mapping purposes.

4. Eligibility Criteria

The cooperative agreements (CAs) awarded in this effort are intended to supplement and not supplant, on-going mapping efforts by the community, regional agency, or State. The FEMA funds are in addition to the partner's current effort. This is the first year of this initiative and the FEMA Regional Offices have selected pilot communities based on the following criteria:

(a) The CTC partner must have existing processes or systems in place that support mapping or data collection activities that contribute to flood hazard identification. These ongoing processes or systems must be supported by non-federal funding.

(b) The CTC partner must have demonstrated the capability to perform the mapping activities for which it is applying.

(c) The CTC partner must be a community participating in the NFIP, and be in good standing in the program as determined by the FEMA Regional Office, or be a State or regional agency that serves communities that participate in the NFIP.

These criteria, which have been used in this pilot year, will be evaluated by FEMA and further enhanced in subsequent years. In addition to the selection criteria above, communities that receive a CA must be able to perform the financial management activities required as part of the cooperative agreement (i.e., account for federal funds, prepare financial reports). FEMA regional offices will assist the communities with these financial management activities.

5. Cooperating Technical Community Contacts

Region 1: (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), Dean Savramis, 442 J.W. McCormack POCH, Boston, MA 02109, Telephone: (617) 223–9564, (email) *dean.savramis@fema.gov*.

Region 2: (New Jersey, New York, Puerto Rico, Virgin Islands), Paul Weberg, 26 Federal Plaza, Room 1337, New York, NY 10278, (212) 225–7229, (email) *paul.weberg@fema.gov*.

Region 3: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia), Erik Rourke, 615 Chestnut Street, 6th Floor, Philadelphia, PA 19106, (215) 931–5665, (email) *erik.rourke@fema.gov*.

Region 4: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Bel Marquez, 3003 Chamblee Tucker Rd., Atlanta, GA 30341, Telephone: (770) 220–5436, (email) *bel.marquez@fema.gov*.

Region 5: (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Ken Hinterlong, 536 S. Clark Street, 6th Floor, Chicago, IL 60605, Telephone: (312) 408–5529, (email) *ken.hinterlong@fema.gov*.

Region 6: (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), Jack Quarles, FRC 800 North Loop 288, Denton, TX 76210, Telephone: (817) 898–5156, (email) *jack.quarles@fema.gov*.

Region 7: (Iowa, Kansas, Missouri, Nebraska), Bob Franke, 2323 Grand Avenue, Suite 900, Kansas City, MO 64108, Telephone: (816) 283–7073, (email) *bob.franke@fema.gov*

Region 8: (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), John Liou, Denver Federal Center, Bldg. 710, Box 25267, Denver, CO 80225, Telephone: (303) 235–4836, *john.liou@fema.gov*.

Region 9: (Arizona, California, Hawaii, Nevada, American Samoa, Guam), Les Sakumoto, Bldg. 105, Presidio of San Francisco, San Francisco, CA 94129, Telephone: (415) 923–7183, (email) *leslie.sakumoto@fema.gov*.

Region 10: (Alaska, Idaho, Oregon, Washington), Larry Basich, Federal Regional Center, 130—228th Street, Bothell, WA 98021, Telephone: (425) 487–4703, (email) *lawrence.basich@fema.gov*.

Dated: September 23, 1999.

Robert F. Shea, Jr.,

Acting Associate Director for Mitigation.

[FR Doc. 99–25784 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Opening Meeting, National Dam Safety Review Board

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with § 8(h) of the National Dam Safety Program Act (P.L. 104–303), the Federal Emergency Management Agency gives notice that the following meeting will be held:

NAME: National Dam Safety Review Board.

DATE OF MEETING: October 11, 1999.

PLACE: Hyatt Regency Union State, St. Louis, Missouri.

TIME: 1:00 p.m.–5:00 p.m.

PROPOSED AGENDA: Review National Dam Safety Program activities.

STATUS: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Donald Bathurst, Director, National Dam Safety Program, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, S.W., Room 416, Washington, D.C. 20472, telephone (202) 646–2753 or by facsimile at (202) 646–3990.

SUPPLEMENTARY INFORMATION: This meeting is open to the public with limited seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact Rita Henry, Federal Emergency Management Agency, 500 C Street, S.W., Room 416, Washington, D.C. 20472, Telephone (202) 646–2704 or Bud Andress at (202) 646–2801 or by facsimile at (202) 646–3990 on or before October 7, 1999.

Minutes of the meeting will be prepared and available upon request 30 days after they have been approved by the National Dam Safety Review Board.

Dated: September 28, 1999.

Michael J. Armstrong,

Associate Director for Mitigation

[FR Doc. 99–25805 Filed 10–4–99; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL HOUSING FINANCE BOARD

[No. 99–N–13]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it has submitted

the information collection entitled ''Advances to Nonmember Mortgagees'' to the Office of Management and Budget (OMB) for review and approval of a three-year extension of the OMB control number, which is due to expire on November 30, 1999.

DATES: Interested persons may submit comments on or before November 4, 1999.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Housing Finance Board, Washington, DC 20503. Address requests for copies of the information collection and supporting documentation to Elaine L. Baker, Secretary to the Board, by telephone at 202/408–2837, by electronic mail at bakere@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Jonathan F. Curtis, Senior Financial Analyst, Policy Development and Analysis Division, Office of Policy, Research and Analysis, by telephone at 202/408–2866, by electronic mail at curtisj@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of Information Collection

Section 10b of the Federal Home Loan Bank Act (Bank Act) authorizes the Federal Home Loan Banks (FHLBanks) to make advances under certain circumstances to certified nonmember mortgagees. *See* 12 U.S.C. 1430b. In order to be certified as a nonmember mortgagee, an applicant must meet the eligibility requirements set forth in section 10b of the Bank Act. Subpart B of part 935 of the Finance Board's regulations implements the statutory eligibility requirements an applicant must meet in order to be certified as a nonmember mortgagee and establishes uniform review criteria the FHLBanks must use in evaluating applications. *See* 12 CFR 935.20–935.24. More specifically, § 935.22 of the rule implements the statutory eligibility requirements and provides guidance to an applicant on how it may satisfy the requirements. 12 CFR 935.22. Under § 935.23, the FHLBanks have authority to approve or deny all applications for certification as a nonmember mortgagee, subject to the statutory and regulatory requirements. 12 CFR 935.23. Section 935.23 also permits an applicant to appeal a FHLBank's decision to deny certification to the Finance Board. Section 935.24 of the rule establishes the terms and conditions under which a FHLBank may make advances to a nonmember mortgagee. 12 CFR 935.24. Section 935.24 also imposes on a certified nonmember mortgagee a continuing obligation to provide information necessary to determine if it remains in compliance with applicable statutory and regulatory requirements.

The information collection contained in § 935.22 through § 935.24 of the rule is necessary to enable, and is used by the FHLBanks to determine whether a respondent satisfies the statutory and regulatory requirements to be certified initially and maintain its status as a nonmember mortgagee eligible to receive FHLBank advances. The Finance Board requires and uses the information collection to determine whether to uphold or overrule a FHLBank's decision to deny nonmember mortgagee certification to an applicant.

The OMB number for the information collection is 3069–005. The OMB clearance for the information collection expires on November 30, 1999.

The likely respondents include applicants for nonmember mortgagee certification and certified nonmember mortgagees.

B. Burden Estimate

The Finance Board estimates the total annual average number of applicants at six, with one response per applicant. The estimate for the average hours per application is ten hours. The estimate for the annual hour burden for applicants is 60 hours (6 applicants × 1 response per applicant × approximately 10 hours).

The Finance Board estimates the total annual average number of certified nonmember mortgagees at 43, with 1 response per mortgagee. The estimate for the average hours per certified nonmember mortgagee response is 0.5 hours. The estimate for the annual hour burden for certified nonmember mortgagees is 21.5 hours (43 certified nonmember mortgagees × 1 response per mortgagee × approximately 0.5 hours).

The Finance Board estimates that the total annual hour burden for all respondents is 81.5 hours (6 applicants × 1 response per applicant × approximately 10 hours + 43 certified nonmember mortgagees × 1 response per mortgagee × approximately 0.5 hours).

C. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), the Finance Board published a request for public comments regarding this information collection in the **Federal Register** on June 16, 1999. *See* 64 FR 32235 (June 16, 1999). The 60-day comment period closed on August 16, 1999. The Finance Board received no public comments. Written comments are requested on: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) The accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) Ways to enhance the quality, utility, and clarity of the information collected; and (4) 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 may be submitted to OMB in writing at the address listed above.

By the Federal Housing Finance Board.

Dated: September 27, 1999.

William W Ginsberg,

Managing Director.

[FR Doc. 99–25746 Filed 10–4–99; 8:45 am]

BILLING CODE 6725–01–P

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., Tuesday, October 12, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 1, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–26098 Filed 10–1–99; 3:51 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Publication of the Executive Summary of the Report, Research Involving Human Biological Materials: Ethical Issues and Policy Guidance, by the National Bioethics Advisory Commission (NBAC)

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The functions of NBAC are as follows:

(a) Provide advice and make recommendations to the National Science and Technology Council and to other appropriate government entities regarding the following matters:

(1) The appropriateness of departmental, agency or other governmental programs, policies, assignments, missions, guidelines, and regulations as they relate to bioethical issues arising from research on human biology and behavior; and (2) applications, including the clinical applications, of that research.

(b) Identify broad principles to govern the ethical conduct of research, citing specific projects only as illustrations for such principles.

(c) Shall not be responsible for the review and approval of specific projects.

(d) In addition to responding to requests for advice and recommendations from the National Science and Technology Council, NBAC also may accept suggestions of issues for consideration from both the Congress and the public. NBAC may also identify other bioethical issues for the purpose of providing advice and recommendations, subject to the approval of the National Science and Technology Council. The members of NBAC are as follows:

Harold T. Shapiro, Ph.D., Chair
Patricia Backlar
Arturo Brito, M.D.
Alexander Morgan Capron, LL.B.
Eric J. Cassell, M.D., M.A.C.P.
R. Alta Charo, J.D.
James F. Childress, Ph.D.
David R. Cox, M.D., Ph.D.
Rhetaugh G. Dumas, Ph.D., R.N.
Laurie M. Flynn
Carol W. Greider, Ph.D.
Steven H. Holtzman
Bernard Lo, M.D.
Lawrence H. Miike, M.D., J.D.
Thomas H. Murray, Ph.D.
William C. Oldaker, L.L.B.
Diane Scott-Jones, Ph.D.

Research Involving Human Biological Materials: Ethical Issues and Policy Guidance; Executive Summary

Introduction

Biomedical researchers have long studied human biological materials—such as cells collected in research projects, biopsy specimens obtained for diagnostic purposes, and organs and tissues removed during surgery—to increase knowledge about human diseases and to develop better means of preventing, diagnosing, and treating these diseases. Today, new technologies and advances in biology provide even more effective tools for using such resources to improve medicine's diagnostic and therapeutic potential. Yet, the very power of these new technologies raises a number of important ethical issues.

Is it appropriate to use stored biological materials in ways that originally were not contemplated either by the people from whom the materials came or by those who collected the materials? Does such use harm anyone's interest? Does it matter whether the material is identified, or identifiable, as to its source, or is linked, or linkable, to other medical or personal data regarding the source? The extent to which a research sample can be linked with the identity of its source is a significant determination in assessing the risks and potential benefits that might occur to human subjects. For this reason, the National Bioethics Advisory Commission (NBAC) has developed a schema to describe the character of the personal information associated with particular samples of human biological materials as they exist in clinical facilities or other repositories and in the hands of researchers. (See Table 1.)

TABLE 1.—CATEGORIES OF HUMAN BIOLOGICAL MATERIALS

Repository Collections.

Unidentified specimens: For these specimens, identifiable personal information was not collected or, if collected, was not maintained and cannot be retrieved by the repository.

Identified specimens: These specimens are linked to personal information in such a way that the person from whom the material was obtained could be identified by name, patient number, or clear pedigree location (i.e., his or her relationship to a family member whose identity is known).

Research Samples:

Unidentified samples: Sometimes termed ''anonymous,'' these samples are supplied by repositories to investigators from a collection of unidentified human biological specimens.

Unlinked samples: Sometimes termed ''anonymized,'' these samples lack identifiers or codes that can link a particular sample to an identified specimen or a particular human being.

Coded samples: Sometimes termed ''linked'' or ''identifiable,'' these samples are supplied by repositories to investigators from identified specimens with a code rather than with personally identifying information, such as a name or Social Security number.

Identified samples: These samples are supplied by repositories from identified specimens with a personal identifier (such as a name or patient number) that would allow the researcher to link the biological information derived from the research directly to the individual from whom the material was obtained.

Ethical researchers must pursue their scientific aims without compromising the rights and welfare of human subjects. However, achieving such a balance is a particular challenge in rapidly advancing fields, such as human genetics, in which the tantalizing potential for major advances can make research activities seem especially important and compelling. At the same time, the novelty of many of these fields can mean that potential harms to individuals who are the subjects of such research are poorly understood and hence can be over-or underestimated. This is particularly true of nonphysical harms, which can occur in research conducted on previously collected human biological materials when investigators do not directly interact with the persons whose tissues, cells, or DNA they are studying.

Increasing concerns about the use of genetic and other medical information

have fueled the current debate about medical privacy and discrimination. Because medical research can reveal clinically relevant information about individuals, scientists must ensure that those who participate in research are adequately protected from unwarranted harms resulting from the inadvertent release of such information. Although protection of human subjects in research is of primary concern in the U.S. biomedical research system, research that uses biological materials—materials that often are distanced in time and space from the persons from whom they were obtained—raises unique challenges regarding the appropriate protection of research subjects.

Research sponsors, investigators, and Institutional Review Boards (IRBs) thus must exercise great care and sensitivity in applying professional guidelines and government regulations to protect subjects whose biological materials are used in research. Properly interpreted and modestly modified, present federal regulations can protect subjects' rights and interests and at the same time permit well-designed research to go forward using materials already in storage as well as those newly collected by investigators and others. Fundamentally, the interests of subjects and those of researchers are not in conflict. Rather, appropriate protection of subjects provides the reassurance needed if individuals are to continue to make their tissue, blood, or DNA available for research. Indeed, public confidence in the ethics and integrity of the research process translates into popular support for research in general.

Policies and guidelines governing human subjects research should permit investigators—under certain circumstances and with the informed, voluntary consent of sample sources—to have access to identifying information sufficient to enable them to gather necessary data regarding the subjects. Provided that adequate protections exist (which usually, but not always, include informed consent), such information gathering could include ongoing collection of medical records data and even requests for individuals to undergo tests to provide additional research information. In some cases, it even will be acceptable for investigators to convey information about research results to the persons whose samples have been studied. Where identifying information exists, however, a well-developed system of protections must be implemented to ensure that risks are minimized and that the interests of sample sources are protected.

Finally, any system of regulation is most likely to achieve its goals if it is as clear and as simple as possible. This is especially true in the research use of human biological materials, because the federal protections for research subjects require investigators to outline the involvement of human subjects in their studies and to undergo institutional review of their protocols. Thus, one reason to modify regulations is to clarify which protocols are subject to what sorts of prior review; likewise, illustrations and explanations may be useful in clarifying how the regulations apply to novel or complicated fields that use human biological materials.

How well does the existing Federal Policy for the Protection of Human Subjects (the so-called Common Rule, codified at 45 CFR Part 46) meet these objectives? Specifically, does it provide clear direction to research sponsors, investigators, IRBs, and others regarding the conduct of research using human biological materials in an ethical manner? NBAC finds that it does not adequately do so. In some cases, present regulatory language provides ambiguous guidance for research using human biological materials. For example, confusion about the intended meaning of terms such as ''human subject,'' ''publicly available,'' and ''minimal risk'' has stymied investigators and IRB members. Beyond these ambiguities, certain parts of current regulations are inadequate to ensure the ethical use of human biological materials in research and require some modification.

In this report, NBAC offers a series of recommendations that have been developed to address perceived difficulties in the interpretation of federal regulations and in the language of position statements of some professional organizations; ensure that research involving human biological materials will continue to benefit from appropriate oversight and IRB review, the additional burdens of which are kept to a minimum; provide investigators and IRBs with clear guidance regarding the use of human biological materials in research, particularly with regard to informed consent; provide a coherent public policy for research in this area that will endure for many years and be responsive to new developments in science; and provide the public (including potential research subjects) with increased confidence in research that makes use of human biological materials. In particular, this report provides interpretations of several important concepts and terms in the Common Rule and recommends ways both to strengthen and clarify the regulations and to make their implementation more consistent.

Recommendations

Interpretation of the Existing Federal Regulations

NBAC offers the following recommendations to improve the interpretation and implementation of the existing federal regulations as they apply to research using human biological materials.

Recommendation 1

Federal regulations governing human subjects research (45 CFR 46) that apply to research involving human biological materials should be interpreted by the Office for Protection from Research Risks (OPRR), other federal agencies that are signatories to the Common Rule, IRBs, investigators, and others, in the following specific ways:

(a) Research conducted with unidentified samples is not human subjects research and is not regulated by the Common Rule.

(b) Research conducted with unlinked samples is research on human subjects and is regulated by the Common Rule, but is eligible for exemption from IRB review pursuant to 45 CFR 46.101(b)(4).

(c) Research conducted with coded or identified samples is research on human subjects and regulated by the Common Rule. It is not eligible for exemption unless the specimens or the samples are publicly available as defined by 45 CFR 46.101 (b)(4). Few collections of human biological materials are publicly available, although many are available to qualified researchers at reasonable cost. Therefore, OPRR should make clear in its guidance that in most cases this exemption does not apply to research using human biological materials.

The current federal regulations appear to make eligible for expedited review research on materials that will be collected for clinical purposes or those that will be collected in noninvasive or minimally invasive ways for research purposes. NBAC finds that there is no need to distinguish between collections originally created for clinical purposes and those created for research purposes. In both cases, research on the collected materials should be eligible for expedited review if the research presents no more than a minimal risk to the study subjects. (See the discussion of minimal risk below.)

Recommendation 2

OPRR should revise its guidance to make clear that all minimal-risk research involving human biological materials—regardless of how they were collected—should be eligible for expedited IRB review.

Special Concerns About the Use of Unlinked Samples

Given the importance of society's interest in treating disease and developing new therapies, a policy that severely restricts research access to unidentified and unlinked samples would severely hamper research and could waste a valuable research resource. As noted in Recommendation 1, research using unlinked samples may be exempt from review. However, if coded or identified samples are rendered unlinked by the investigator, special precautions are in order.

Recommendation 3

When an investigator proposes to create unlinked samples from coded or identified materials already under his or her control, an IRB (or other designated officials at the investigator's institution) may exempt the research from IRB review if it determines that:

(a) The process used to unlink the samples will be effective, and

(b) The unlinking of the samples will not unnecessarily reduce the value of the research.

Requirements for Investigators Using Coded or Identified Samples

Repositories and IRBs share responsibility with investigators to ensure that research is designed and conducted in a manner that appropriately protects human subjects from unwarranted harms.

Recommendation 4

Before releasing coded and/or identified samples from its collection, a repository should require that the investigator requesting the samples either provide documentation from the investigator's IRB that the research will be conducted in compliance with applicable federal regulations or explain in writing why the research is not subject to those regulations.

Recommendation 5

When reviewing and approving a protocol for research on human biological materials, IRBs should require the investigator to set forth:

(a) A thorough justification of the research design, including a description of procedures used to minimize risk to subjects,

(b) A full description of the process by which samples will be obtained,

(c) Any plans to obtain access to the medical records of the subjects, and

(d) A full description of the mechanisms that will be used to maximize the protection against inadvertent release of confidential information.

When an investigator obtains access to a patient's medical records, either to identify sample sources or to gather additional medical information, human subjects research is being conducted. IRBs should adopt policies to govern such research, consistent with existing OPRR guidance related to medical records research.

Obtaining Informed Consent

Research using coded or identified samples requires the consent of the source, unless the criteria for a consent waiver have been satisfied. Unfortunately, the consent obtained at the time the specimen was obtained may not always be adequate to satisfy this requirement. When research is contemplated using existing samples, the expressed wishes of the individuals who provided the materials must be respected. Where informed consent documents exist, they may indicate whether individuals wanted their sample to be used in future research and in some instances may specify the type of research.

When human biological materials are collected, whether in a research or clinical setting, it is appropriate to ask subjects for their consent to future use of their samples, even in cases where such uses are at the time unknown. In this latter case, however, particular considerations are needed to determine whether to honor prospective wishes.

Whether obtaining consent to the research use of human biological materials in a research or clinical setting, and whether the consent is new or renewed, efforts should be made to be as explicit as possible about the uses to which the material might be put and whether it is possible that the research might be conducted in such a way that the individual could be identified. Obviously, different conditions will exist for different research protocols, in different settings, and among individuals. NBAC notes that the current debate about the appropriate use of millions of stored specimens endures because of the uncertain nature of past consents. Investigators and others who collected and stored human biological materials now have the opportunity to correct past inadequacies by obtaining more specific and clearly understood informed consent.

Recommendation 6

When informed consent to the research use of human biological materials is required, it should be obtained separately from informed consent to clinical procedures.

Recommendation 7

The person who obtains informed consent in clinical settings should make clear to potential subjects that their refusal to consent to the research use of biological materials will in no way affect the quality of their clinical care.

Recommendation 8

When an investigator is conducting research on coded or identified samples obtained prior to the implementation of NBAC's recommendations, general releases for research given in conjunction with a clinical or surgical procedure must not be presumed to cover all types of research over an indefinite period of time. Investigators and IRBs should review existing consent documents to determine whether the subjects anticipated and agreed to participate in the type of research proposed. If the existing documents are inadequate and consent cannot be waived, the investigator must obtain informed consent from the subjects for the current research or in appropriate circumstances have the identifiers stripped so that samples are unlinked.

Recommendation 9

To facilitate collection, storage, and appropriate use of human biological materials in the future, consent forms should be developed to provide potential subjects with a sufficient number of options to help them understand clearly the nature of the decision they are about to make. Such options might include, for example:

(a) Refusing use of their biological materials in research,

(b) Permitting only unidentified or unlinked use of their biological materials in research,

(c) Permitting coded or identified use of their biological materials for one particular study only, with no further contact permitted to ask for permission to do further studies,

(d) Permitting coded or identified use of their biological materials for one particular study only, with further contact permitted to ask for permission to do further studies,

(e) Permitting coded or identified use of their biological materials for any study relating to the condition for which the sample was originally collected, with further contact allowed to seek permission for other types of studies, or

(f) Permitting coded use of their biological materials for any kind of future study.*

Criteria for Waiver of Consent

When an investigator proposes to conduct research with coded or identified samples, it is considered

research with human subjects. Ordinarily the potential research subject is asked whether he or she agrees to participate. Seeking this consent demonstrates respect for the person's right to choose whether to cooperate with the scientific enterprise, and it permits individuals to protect themselves against unwanted or risky invasions of privacy. But informed consent is merely one aspect of human subjects protection. It is an adjunct to—rather than a substitute for—IRB review to determine if the risks of a study are minimized and acceptable in relation to its benefits.

When a study is of minimal risk, informed consent is no longer needed by a subject as a form of self-protection against research harms. However, it is still appropriate to seek consent in order to show respect for the subject, unless it is impracticable to locate him or her in order to obtain it. Thus, when important research poses little or no risk to subjects whose consent would be difficult or impossible to obtain, it is appropriate to waive the consent requirement.

Recommendation 10

IRBs should operate on the presumption that research on coded samples is of minimal risk to the human subject if:

(a) The study adequately protects the confidentiality of personally identifiable information obtained in the course of research,

(b) The study does not involve the inappropriate release of information to third parties, and

(c) the study design incorporates an appropriate plan for whether and how to reveal findings to the sources or their physicians should the findings merit such disclosure.

Failure to obtain informed consent may adversely affect the rights and welfare of subjects in two basic ways. First, the subject may be improperly denied the opportunity to choose whether to assume the risks that the research presents, and second, the subject may be harmed or wronged as a result of his or her involvement in research to which he or she has not consented.

Further, when state or federal law, or customary practice, gives subjects a right to refuse to have their biological materials used in research, then a consent waiver would affect their rights adversely. Medical records privacy statutes currently in place or under consideration generally allow for unconsented research use and could be interpreted to suggest a similar standard for research using human biological materials. But as new statutes are enacted, it is possible that subjects will be given explicit rights to limit access to their biological materials.

* Commissioners Capron, Miike, and Shapiro wrote statements regarding their concerns about various aspects of this recommendation. (See page 65 of the full report.)

Recommendation 11

In determining whether a waiver of consent would adversely affect subjects' rights and welfare, IRBs should be certain to consider:

(a) Whether the waiver would violate any state or federal statute or customary practice regarding entitlement to privacy or confidentiality,

(b) Whether the study will examine traits commonly considered to have political, cultural, or economic significance to the study subjects, and

(c) Whether the study's results might adversely affect the welfare of the subject's community.

Even when research poses no more than minimal risk and a consent waiver would not affect the rights and welfare of subjects, respect for subjects requires that their consent be sought. However, on some occasions, demonstrating this respect through consent requirements could completely halt important research. An investigator who requests a waiver of the informed consent requirement for research use of human biological materials under the current federal regulations must provide to the IRB evidence that it is not practicable to obtain consent. Unfortunately, neither the regulations nor OPRR offers any guidance on what defines practicability.

Recommendation 12

If research using existing coded or identified human biological materials is determined to present minimal risk, IRBs may presume that it would be impracticable to meet the consent requirement (45 CFR 46.116(d)(3)). This interpretation of the regulations applies only to the use of human biological materials collected before the adoption of the recommendations contained in this report (specifically Recommendations 6 through 9 regarding informed consent). Materials collected after that point must be obtained according to the recommended informed consent process and, therefore, IRBs should apply their usual standards for the practicability requirement.

NBAC recognizes that if its recommendation that coded samples be treated as though they are identifiable is adopted, there may be an increase in the number of research protocols that will require IRB review. If, however, such protocols are then determined by an IRB to present minimal risk to a subject's rights and welfare, the requirement for consent may be waived if the practicability requirement is revised for this category of research. However, it must be noted that by dropping the requirement that consent must be obtained if practicable, NBAC does so with the expectation that the process and content of informed consent for the collection of new specimens will be explicit regarding the intentions of the subjects and the research use of their materials. (See Recommendations 6 through 9 concerning informed consent.)

According to current regulations, the fourth condition for the waiver of consent stipulates that ''whenever appropriate, the subjects will be provided with additional pertinent information after participation'' (45 CFR 46.116(d)(4)). Thus, according to the regulations, an IRB, while waiving consent (by finding and documenting the first three required conditions), could require that subjects be informed that they were subjects of research and that they be provided details of the study-a so-called debriefing requirement. In general, NBAC concludes that this fourth criterion for waiver of consent is not relevant to research using human biological materials and, in fact, might be harmful if it forced investigators to recontact individuals who might not have been aware that their materials were being used in research.

Recommendation 13

OPRR should make clear to investigators and IRBs that the fourth criterion for waiver, that ''whenever appropriate, the subjects will be provided with additional pertinent information after participation'' (45 CFR 46.116(d)(4)), usually does not apply to research using human biological materials.

Reporting Research Results to Subjects

Experts disagree about whether findings from research should be communicated to subjects. However, most do believe that such findings should not be conveyed to subjects unless they are confirmed and reliable and constitute clinically significant or scientifically relevant information.

Recommendation 14

IRBs should develop general guidelines for the disclosure of the results of research to subjects and require investigators to address these issues explicitly in their research plans.

In general, these guidelines should reflect the presumption that the disclosure of research results to subjects represents an exceptional circumstance. Such disclosure should occur only when all of the following apply:

(a) The findings are scientifically valid and confirmed,

(b) The findings have significant implications for the subject's health concerns, and

(c) A course of action to ameliorate or treat these concerns is readily available.

Recommendation 15

The investigator in his or her research protocol should describe anticipated research findings and circumstances that might lead to a decision to disclose the findings to a subject, as well as a plan for how to manage such a disclosure.

Recommendation 16

When research results are disclosed to a subject, appropriate medical advice or referral should be provided.

Considerations of Potential Harms to Others

The federal regulations governing the protection of research subjects extend only to individuals who can be identified as the sources of the biological samples. The exclusive focus of the regulations on the individual research subject is arbitrary from an ethical standpoint, because persons other than the subject can benefit or be harmed as a consequence of the research.

Recommendation 17

Research using stored human biological materials, even when not potentially harmful to individuals from whom the samples are taken, may be potentially harmful to groups associated with the individual. To the extent such potential harms can be anticipated, investigators should to the extent possible plan their research so as to minimize such harm and should consult, when appropriate, representatives of the relevant groups regarding study design. In addition, when research on unlinked samples that poses a significant risk of group harms is otherwise eligible for exemption from IRB review, the exemption should not be granted if IRB review might help the investigator to design the study in such a way as to avoid those harms.

Recommendation 18

If it is anticipated that a specific research protocol poses a risk to a specific group, this risk should be disclosed during any required informed consent process.

Publication and Dissemination of Research Results

Publishing research results with identifiable information in scientific or medical journals and elsewhere may pose a risk to the privacy and confidentiality of research subjects. Public disclosure of such information through written descriptions or pedigrees may cause subjects to experience adverse psychosocial effects. In addition, without the informed consent of the individual, such disclosure infringes on the rights of the subject or patient. Because of the familial nature of information in pedigrees, their publication poses particularly difficult questions regarding consent. Investigators and journal editors should be aware that the ways in which research results are publicized or disseminated could affect the privacy of human subjects. NBAC believes that the source of funding, i.e., public or private, should not be an important consideration in determining the ethical acceptability of the research.

Recommendation 19

Investigators' plans for disseminating results of research on human biological materials should include, when appropriate, provisions to minimize the potential harms to individuals or associated groups.

Recommendation 20

Journals should adopt the policy that the published results of research studies involving human subjects must specify whether the research was conducted in compliance with the requirements of the Common Rule. This policy should extend to all human subjects research, including studies that are privately funded or are otherwise exempt from these requirements.

Professional Education and Responsibilities

Public and professional education plays an essential role in developing and implementing effective public policy regarding use of human biological materials for research. By education, NBAC is referring not simply to the provision of information with the aim of adding to the net store of knowledge by any one person or group; rather, education refers to the ongoing effort to inform, challenge, and engage. Widespread and continuing deliberation on the subject of this report must occur to inform and educate the public about developments in the field of genetics and other areas in the biomedical sciences, especially when they affect important cultural practices, values, and beliefs.

Recommendation 21

The National Institutes of Health, professional societies, and health care organizations should continue and expand their efforts to train investigators about the ethical issues and regulations regarding research on human biological materials and to develop exemplary practices for resolving such issues.

Recommendation 22

Compliance with the recommendations set forth in this report will require additional resources. All research sponsors (government, private sector enterprises, and academic institutions) should work together to make these resources available.

Use of Medical Records in Research on Human Biological Materials

In recent years, attention increasingly has been paid by policymakers to the need to protect the health information of the individual. Extensive efforts at the state and federal levels to enact such protections have resulted in the setting of a variety of limitations on access to patient medical records. NBAC notes that debates about medical privacy are relevant to researchers using human biological materials in two ways. First, these researchers often need access to patient medical records, either to identify research sample sources or to gather accompanying clinical information. Such activities constitute human subjects research and should be treated accordingly. Second, the development of statutes and regulations to protect patient medical records could have the unintended consequence of creating a dual system of protections, one for the medical record and one for human biological materials. Moreover, restrictions on access to the medical record could impede legitimate and appropriate access on the part of investigators whose protocols have undergone proper review.

Recommendation 23

Because many of the same issues arise in the context of research on both medical records and human biological materials, when drafting medical records privacy laws, state and federal legislators should seek to harmonize rules governing both types of research. Such legislation, while seeking to protect patient confidentiality and autonomy, should also ensure that appropriate access for legitimate research purposes is maintained.

Summary

To advance human health, it is critical that human biological materials continue to be available to the biomedical research community. Increasingly, it will be essential for investigators to collect human biological materials from individuals who are willing to share important clinical information about themselves. In addition, it is crucial that the more than 282 million specimens already in storage remain accessible under appropriate conditions and with appropriate protections for the individuals who supplied this material.

The growing availability to third parties of genetic and other medical information about individuals has fueled the current debate about medical privacy and discrimination, and NBAC is sensitive to the possibility that the use of information obtained from human biological samples can lead to harms as well as benefits. These concerns require that those who agree to provide their DNA, cells, tissues, or organs for research purposes not be placed at risk. Measures to provide appropriate protections for individual privacy and for the confidentiality of clinical and research data are important if significant research is to continue. The recommendations provided in this report are intended to promote the goals of improving health through biomedical research while protecting the rights and welfare of those individuals who contribute to human knowledge through the gift of their biological materials.

For further information about the report contact Eric M. Meslin, Ph.D., Executive Director, National Bioethics Advisory Commission or to obtain copies of the report contact: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900. Copies may also be obtained through the NBAC website: www.bioethics.gov.

Dated: September 27, 1999.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 99–25663 Filed 10–4–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0240]

Agency Information Collection Activities; Announcement of OMB Approval; Extralabel Drug Use in Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Extralabel Drug Use in Animals'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 30, 1999 (64 FR 35173), 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 0910–0325. The approval expires on September 30, 2002. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: September 28, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–25774 Filed 10–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee); Notice of Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of September 22, 1999 (64 FR 51328). The notice announced a meeting of the Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee), which is scheduled for October 14 and 15, 1999. The document was published with an error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Ronald F. Coene, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6696.

SUPPLEMENTARY INFORMATION: In FR Doc. 99–24598 appearing in the **Federal Register** of Wednesday, September 22, 1999, the following correction is made:

On page 51328, in the second column, under the ''*Location*'' caption, in the second line ''rm. K'' is corrected to read ''rm. M''.

Dated: September 28, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–25772 Filed 10–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–4003]

Medical Devices; Guidance on Preclinical and Clinical Data and Labeling for Breast Prostheses; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Guidance on Preclinical and Clinical Data and Labeling for Breast Prostheses.'' This draft guidance is not final nor is it in effect at this time. The purpose of this document is to provide guidance to sponsors of breast implant prostheses on important preclinical, clinical, and labeling information that should be presented in an investigational device exemptions (IDE), a premarket approval (PMA), or a product development protocol (PDP) application. This draft guidance discusses information relevant to silicone gel-filled, saline-filled, and alternative-filled breast prostheses intended for prostheses for breast augmentation, breast reconstruction

following mastectomy, and revision of a failed prosthesis.

DATES: Written comments concerning this draft guidance must be received by January 4, 2000.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5″ diskette of the draft guidance entitled ''Guidance on Preclinical and Clinical Data and Labeling for Breast Prostheses'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

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: Samie N. Allen, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this document is to provide guidance to sponsors of breast implant prostheses on important preclinical, clinical, and labeling information that should be presented in an IDE, PMA, or PDP application. It may also be useful in the preparation of reclassification petitions and master files.

This draft guidance discusses information relevant to silicone gel-filled, saline-filled, and alternative-filled breast prostheses intended for prostheses for breast augmentation, breast reconstruction following mastectomy, and revision of a failed prosthesis. This draft guidance does not address tissue expanders, which are unclassified devices for temporary use. Additionally, this draft guidance does not address alternative shell materials for use in breast implants.

This draft guidance is intended to combine and replace the following three individual guidances that were previously developed for silicone gel, saline, and alternative breast prostheses:

(1) ''Draft Guidance for Preparation of FDA Submissions of Silicone Gel–Filled Breast Prostheses'' (May 11, 1992); (2) ''Draft Guidance for Testing of Alternative Breast Prostheses (Non–Silicone, Gel–Filled)'' (September 1, 1994); and (3) ''Draft Guidance for Preparation of PMA Applications for Silicone Inflatable (Saline) Breast Prostheses'' (January 18, 1995).

In addition, this draft guidance involves the revisiting and updating of the scientific preclinical and the clinical and labeling information described in those guidances.

II. Significance of Guidance

This guidance document represents the agency's current thinking on preclinical, clinical, and labeling information for breast prostheses. 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 applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance document consistent with GGP's.

III. Electronic Access

In order to receive the ''Guidance on Preclinical and Clinical Data and Labeling for Breast Prostheses'' via your fax machine, call the CDRH Facts–On–Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1354) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes the draft guidance entitled ''Guidance on Preclinical and Clinical Data and Labeling for Breast Prostheses,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. ''Guidance on Preclinical and Clinical Data and Labeling for Breast Prostheses'' also will be available at http://www.fda.gov/cdrh/ode/1354.pdf.

IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. 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 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: September 21, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–25771 Filed 10–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–9042]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Request for Accelerated Payments and Supporting Regulations in 42 CFR, Section 412.116 & 413.64;

Form No.: HCFA–9042;

Use: Medicare reimbursements are usually arranged through a fiscal intermediary who serves as the Secretary's agent for reviewing claims and making payments equal to the provider's reasonable costs. When a delay in Medicare payment by a fiscal intermediary, for covered services, causes financial difficulties for a provider, the provider may request an accelerated payment. An accelerated payment may also be made in highly exceptional situations where a provider has incurred a temporary delay in its bill processing beyond the provider's normal billing cycle. An accelerated payment can be requested by a provider that is not receiving periodic interim payments. These forms are used by fiscal intermediaries to access a provider's eligibility for accelerated payments.

Frequency: On occasion;

Affected Public: Business or other for-profit, and Not for-profit institutions;

Number of Respondents: 890;

Total Annual Responses: 890;

Total Annual Hours Requested: 445.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 20, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–25833 Filed 10–4–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1056–CN]

RIN 0938–AJ65

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice; correction.

SUMMARY: This document corrects technical errors that appeared in the notice published in the **Federal Register** on July 30, 1999 entitled ''Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update.''

EFFECTIVE DATE: These corrections are effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Bill Ullman, (410) 786–5667.

SUPPLEMENTARY INFORMATION:

Background

In FR Doc. 99–19479 of July 30, 1999 (64 FR 41684), there were a number of technical errors. The errors relate to the update factor that appears in the discussion of one issue, and to a column of incorrect figures displayed in one table.

Regarding the former, section III. of the preamble (64 FR 41697) discusses the statutory three-year, phased transition under which payment is based in part on a facility-specific per diem rate (which reflects an individual facility's historical cost experience) and in part on a Federal per diem rate. For facilities that received payment under the RUG–III demonstration during a cost reporting period that began in calender year 1997, the notice sets forth a three-step procedure for determining the facility-specific rate, in which the final step is an adjustment of the rate by an inflation factor of 1.031532. However, this factor inadvertently failed to reflect an update; as a consequence, the figure of 1.031532 as shown in the notice discussion should instead be 1.062244.

The other correction relates to a technical error in Table 8.C of the preamble (64 FR 41698–99), entitled ''Update Factors for Facility-Specific Portion of the SNF PPS Rates.'' This table provides numerical factors for use in updating a facility's base year costs through fiscal year (FY) 2000 (*i.e.*, the period beginning October 1, 1999, and ending September 30, 2000) by the SNF market basket percentage, as required under section 1888(e)(3)(D) of the Social Security Act (the Act). However, these update factors inadvertently reflected updates to the base period amounts only up to the midpoint of FY 2000 itself, rather than to the midpoint of the corresponding cost reporting periods that begin during FY 2000. This error resulted in incorrect figures being displayed for the update factors that appear in the right-hand column of Table 8.C.

Accordingly, we are reprinting this table below, with the corrected figures displayed in the right-hand column. Additionally, we note that while this correction causes all of the figures displayed in this column of the table to increase, this does not affect the associated budgetary projections, since they were made based on employing the correct methodology for calculating the update factors, as described in the SNF PPS interim final rule (63 FR 26252, May 12, 1998). The corrections appear in this document under the heading ''Correction of Errors.''

The provisions in this correction notice are effective as if they had been included in the document published in the **Federal Register** on July 30, 1999, that is, October 1, 1999.

Correction of Errors

In FR Doc. 99–19479 of July 30, 1999 (64 FR 41684), we are making the following corrections:

Corrections

Page 41697

In the second column, in the paragraph entitled ''Step 3.,'' the first sentence is revised to read as follows: ''Adjust the amount in Step 2. by 1.062244 (inflation factor)—Do not use 8.C.''

Page 41698

Corrected Table 8.C (Update Factors for Facility-Specific Portion of the SNF PPS Rates) is set forth below:

TABLE 8.C—UPDATE FACTORS[1] FOR FACILITY—SPECIFIC PORTION OF THE SNF PPS RATES—ADJUST TO 12-MONTH COST REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 1999 AND BEFORE OCTOBER 1, 2000 FROM COST REPORTING PERIODS BEGINNING IN FY 1995 (BASE YEAR)

If 12-month cost reporting period in initial period begins	Adjust from 12-month cost reporting period in base year that begins	Using update factor of
October 1, 1999	October 1, 1994	1.09929
November 1, 1999	November 1, 1994	1.09897
December 1, 1999	December 1, 1994	1.09855
January 1, 2000	January 1, 1995	1.09831
February 1, 2000	February 1, 1995	1.09827
March 1, 2000	March 1, 1995	1.09841
April 1, 2000	April 1, 1995	1.09853
May 1, 2000	May 1, 1995	1.09861
June 1, 2000	June 1, 1995	1.09866
July 1, 2000	July 1,1995	1.09879
August 1, 2000	August 1, 1995	1.09900
September 1, 2000	September 1, 1995	1.09929

[1] Source: Standard & Poor's DRI, 1st Qtr 1999; @USSIM/TREND25YR0299@CISSIM/CONTROL991

(Authority: Section 1888 of the Social Security Act (42 U.S.C. 1395yy))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 27, 1999.

Brian P. Burns,

Deputy Assistant, Secretary for Information Resources Management.

[FR Doc. 99–25789 Filed 10–4–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Services Administration's Federal Advisory Committee has been filed with the Library of Congress:

Maternal and Child Health Research Grants Review Committee

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, S.E., Washington, D.C. Copies may be obtained from: Gontran Lamberty, Dr. P.H., Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3146.

Dated: September 23, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–25793 Filed 10–4–99; 8:45 am]

BILLING CODE 4160–15 P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of the OIG Compliance Program, Guidance for Hospices

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth the recently issued Compliance Program Guidance for Hospices developed by the Office of Inspector General (OIG). The OIG has previously developed and published compliance program guidance focused on several other areas and aspects of the health care industry. We believe that the development and issuance of this compliance program guidance for hospices will continue to serve as a positive step toward promoting a higher level of ethical and lawful conduct throughout the entire health care industry.

FOR FURTHER INFORMATION CONTACT: Michael Shaw, Office of Counsel to the Inspector General, (202) 619–2078.

SUPPLEMENTARY INFORMATION:

Background

The creation of compliance program guidance remains a major initiative by the OIG in its efforts to engage the health care community in combating fraud and abuse. In formulating compliance guidance, the OIG has worked closely with the Health Care Financing Administration (HCFA), the Department of Justice (DOJ) and various sectors of the health care industry to provide clear guidance to those segments of the industry that are interested in reducing fraud and abuse within their organizations. The five previously-issued compliance program guidances were focused on the hospital industry; home health agencies; clinical laboratories; third-party medical billing companies; and the durable medical equipment, prosthetics, orthotics and supply industry. The development of these types of compliance program guidance is based on our belief that a health care provider can use internal controls to more efficiently monitor adherence to applicable statutes, regulations and program requirements.

Guidance for the Hospice Industry

On January 13, 1999, the OIG published a solicitation notice (64 FR 2228) seeking information and recommendations for developing guidance for the hospice industry. In response to that solicitation notice, the OIG received numerous comments from various parts of the industry and from their representatives. After careful consideration of those initial comments, and in an effort to ensure that all parties had a reasonable opportunity to provide input into a final product, the OIG published draft guidance for the hospice industry on July 21, 1999 (64 FR 39150) for further comment and recommendations.

Elements for an Effective Compliance Program

Through experience, the OIG has identified seven fundamental elements

to an effective compliance program. They are:

- implementing written policies, procedures and standards of conduct;
- designating a compliance officer and compliance committee;
- conducting effective training and education;
- developing effective lines of communication;
- enforcing standards through well-publicized disciplinary guidelines;
- conducting internal monitoring and auditing; and
- responding promptly to detected offenses and developing corrective action.

Through application of these seven basic elements, the OIG is offering specific compliance measures that may be implemented in hospice industry operations in an effort to curtail or eliminate fraud and abuse. As with previously-issued OIG compliance guidances, adoption of the Compliance Program Guidance for Hospices set forth below will be strictly voluntary.

A reprint of this newly-issued compliance program guidance follows:

Office of Inspector General's Compliance Program Guidance for Hospices (September 1999)

I. Introduction

The Office of Inspector General (OIG) of the Department of Health and Human Services (HHS) continues to promote voluntarily developed and implemented compliance programs for the health care industry. The following compliance program guidance is intended to assist hospices [1] and their agents and subproviders (referred to collectively in this document as ''hospices'') develop effective internal controls that promote adherence to applicable Federal and State law, and the program requirements of Federal, State, and private health plans. The adoption and implementation of voluntary compliance programs significantly advance the prevention of fraud, abuse and waste in these health care plans while at the same time further the fundamental mission of all hospices, which is to provide palliative care [2] to patients.

Within this document, the OIG first provides its general views on the value and fundamental principles of hospice compliance programs, and then provides the specific elements that each hospice should consider when developing and implementing an effective compliance program. While this document presents basic procedural and structural guidance for designing a compliance program, it is not in itself a compliance program. Rather, it is a set of guidelines to be considered by a hospice interested in implementing a compliance program.

The OIG recognizes the size-differential that exists between operations of the different hospices and organizations that compose the hospice industry. Appropriately, this guidance is pertinent for all hospices, whether for-profit, non-profit, provider-based, independent, community-based, volunteer-based, large, small, urban or rural. The applicability of the recommendations and guidelines provided in this document depends on the circumstances of each particular hospice. However, regardless of a hospice's size and structure, the OIG believes that every hospice can and should strive to accomplish the objectives and principles underlying all of the compliance policies and procedures recommended within this guidance.

Fundamentally, compliance efforts are designed to establish a culture within a hospice that promotes prevention, detection, and resolution of instances of conduct that do not conform to Federal and State law, and Federal, State and private payor health care program requirements, as well as the hospice's business policies. In practice, the compliance program should effectively articulate and demonstrate the organization's commitment to ethical conduct. Compliance programs guide a hospice's governing body (*e.g.*, board of directors or trustees), chief executive officer (CEO), managers, physicians, clinicians, billing personnel, and other employees in the efficient management and operation of a hospice. Eventually, a compliance program should become part of the fabric of routine hospice operations.

It is incumbent upon a hospice's corporate officers and managers to provide ethical leadership to the organization and to assure that adequate systems are in place to facilitate ethical and legal conduct. Employees, managers and the Government will focus on the words and actions of a hospice's leadership as a measure of the organization's commitment to compliance. Indeed, many hospices have adopted mission statements articulating their commitment to high ethical standards. A formal compliance program, as an additional element in this process, offers a hospice a further concrete method that may improve the appropriateness and quality of care and reduce waste. Compliance programs also provide a central coordinating mechanism for furnishing and disseminating information and guidance on applicable Federal and State statutes, regulations and other requirements.

Implementing an effective compliance program requires a substantial commitment of time, energy and resources by senior management and the hospice's governing body.[3] Superficial programs that simply purport to comply with the elements discussed and described in this guidance or programs that are hastily constructed and implemented without appropriate ongoing monitoring will likely be ineffective and could expose the hospice to greater liability than no program at all. While it may require significant additional resources or reallocation of existing resources to implement an effective compliance program, the OIG believes that the long term benefits of implementing the program outweigh the costs.[4]

A. Benefits of Compliance Plan

The OIG believes an effective compliance program provides a mechanism that brings the public and private sectors together to reach mutual goals of reducing fraud and abuse, strengthening operational quality, improving the quality of health care services and reducing the cost of health care. Attaining these goals provides positive results to hospices, the Government, and individual citizens alike. In addition to fulfilling its legal duty to ensure that it is not submitting false or inaccurate claims to Government and private payors, a hospice may gain numerous additional

[1] The term ''hospice'' is applied in this document as the term ''hospice program'' is defined in 42 U.S.C. 1395x(dd).

[2] Palliative care is an intensive program of care that focuses on the relief of pain and suffering associated with a terminal illness. Through this emphasis on palliative rather than curative services, individuals have a choice whenever conventional approaches for medical treatment may no longer be appropriate. Hospice addresses the needs of terminally ill individuals by including the patient and family, specially trained volunteers, caregivers from the community, and representatives from medicine, nursing, social work and spiritual counseling in the caregiving team.

[3] Recent case law suggests that the failure of a corporate director to attempt in good faith to institute a compliance program in certain situations may be a breach of a director's fiduciary obligation. *See, e.g., In re Caremark International Inc. Derivative Litigation,* 698 A.2d 959 (Ct. Chanc. Del. 1996).

[4] The conclusion of a recent report by the United States General Accounting Office (GAO) to Congress stated that ''despite the investment of time and resources that compliance programs entail, many hospitals believe the benefits of these programs . . . outweigh their costs . . . and providers themselves believe that complance programs can reduce improper Mecicare payments.'' *See* GAO report GAO/HEHS–99–59 (April 1999).

benefits by voluntarily implementing an effective compliance program. These benefits may include the ability to:

- formulate effective controls to assure compliance with Federal and State statutes, rules and regulations, and Federal, State and private payor health care program requirements and internal guidelines;
- concretely demonstrate to employees and the community at large the hospice's strong commitment to honest and responsible provider and corporate conduct;
- identify and prevent illegal and unethical conduct;
- improve internal communication;
- more quickly and accurately react to employees' operational compliance concerns and target resources to address those concerns;
- improve the quality, efficiency, and consistency of patient care;
- create a centralized source for distributing information on health care statutes, regulations, and other program directives regarding fraud, waste and abuse, and related issues;
- formulate a methodology that encourages employees to report potential problems;
- develop procedures that allow the prompt, thorough investigation of alleged misconduct by corporate officers, managers, employees, independent contractors, consultants, volunteers, physicians, nurses and other health care professionals;
- initiate immediate, appropriate, and decisive corrective action; and
- minimize, through early detection and reporting, the loss to the Government from false claims, and thereby reduce the hospice's exposure to civil damages and penalties, criminal sanctions and administrative remedies, such as program exclusion.[5]

Overall, the OIG believes that an effective compliance program is a sound investment on the part of a hospice.

The OIG recognizes that the implementation of a compliance program may not entirely eliminate fraud, abuse and waste from the hospice system. However, a sincere effort by hospices to comply with applicable Federal and State standards, as well as the requirements of private health care programs, through the establishment of an effective compliance program, significantly reduces the risk of unlawful or improper conduct.

B. Application of Compliance Program Guidance

Given the diversity within the industry, there is no single ''best'' hospice compliance program. The OIG understands the variances and complexities within the hospice industry and is sensitive to the differences among large national and regional multi-hospice organizations, small independent hospices and other types of hospice organizations and systems. However, elements of this guidance can be used by all hospices, regardless of size, location, or corporate structure, to establish an effective compliance program. Similarly, a hospital or corporation that owns a hospice or provides hospice services may incorporate these elements into its system-wide compliance or managerial structure. We recognize that some hospices may not be able to adopt certain elements to the same comprehensive degree that others with more extensive resources may achieve. This guidance represents the OIG's suggestions on how a hospice can best establish internal controls and monitoring to correct and prevent fraudulent activities. By no means should the contents of this guidance be viewed as an exclusive discussion of the advisable elements of a compliance program. On the contrary, the OIG strongly encourages a hospice to develop and implement compliance elements that uniquely address its own particular risk areas.

The OIG believes that input and support by the individuals and organizations that will use the tools set forth in this document are critical to the development and success of this compliance program guidance. In a continuing effort to collaborate closely with the private sector, the OIG placed a notice in the **Federal Register** soliciting recommendations and suggestions on what should be included in this Compliance Program Guidance, and then published draft Compliance Program Guidance for Hospices in the **Federal Register** for public comment.[6] Further, we took into consideration previous OIG publications, such as Special Fraud Alerts, the recent findings and recommendations in reports issued by OIG's Office of Audit Services and Office of Evaluation and Inspections, as well as the experience of past and recent fraud investigations related to hospices conducted by OIG's Office of Investigations and the Department of Justice. As appropriate, this guidance may be modified and expanded as more information and knowledge is obtained by the OIG, and as changes in the law, rules, policies and procedures of the Federal, State and private health plans occur.

The OIG recognizes that the development and implementation of compliance programs in hospices often raise sensitive and complex legal and managerial issues.[7] However, the OIG wishes to offer what it believes is critical guidance for providers who are sincerely attempting to comply with the relevant health care statutes and regulations.

II. Compliance Program Elements

The elements proposed by these guidelines are similar to those of other compliance program guidances[8] and the OIG's corporate integrity agreements.[9] The elements represent a guide that can be tailored to fit the needs and financial realities of a particular hospice. The OIG is cognizant that, with regard to compliance programs, one model is not suitable to every hospice.

The OIG believes that every effective compliance program must begin with a formal commitment[10] by the hospice's governing body to include all of the applicable elements listed below. These elements are based on the seven steps of the Federal Sentencing Guidelines.[11]

[5] The OIG, for example, will consider the existence of an *effective* compliance program that pre-dated any governmental investigation when addressing the appropriateness of administrative sanctions. *See* 62 FR 67392 (December 24, 1997). The burden is on the provider to demonstrate the operational effectiveness of a compliance program. Further, the False Claims Act, 31 U.S.C. 3729–3733, provides that a person who has violated the Act, but who voluntarily discloses the violation to the Government, in certain circumstances will be subject to not less than double, as opposed to treble, damages. *See* 31 U.S.C. 3729(a).

[6] *See* 64 FR 2228 (January 13, 1999), Notice for Solicitation of Information and Recommendations for Developing OIG Compliance Program Guidance for the Hospice Industry; 64 FR 39150 (July 21, 1999), Draft Compliance Program Guidance for Hospices.

[7] Nothing stated within this document should be substituted for, or used in lieu of, competent legal advice from counsel.

[8] *See* 63 FR 70138 (December 18, 1998) for the Compliance Program Guidance for Third Party Medical Billing Companies; 63 FR 42410 (August 7, 1998) for the Compliance Program Guidance for Home Health Agencies; 63 FR 45076 (August 24, 1998) for the Compliance Program Guidance for Clinical Laboratories, as revised; 63 FR 8987 (1998) for the Compliance Program Guidance for Hospitals. These documents are also located on the Internet at http://www.dhhs.gov/progorg/oig.

[9] Corporate integrity agreements are executed as part of a civil settlement between the health care provider and the Government to resolve a case based on allegations of health care fraud or abuse. These OIG-imposed programs are in effect for a period of three to five years and require many of the elements included in this compliance program guidance.

[10] *E.g.*, a resolution by the board of directors, owner(s) or president, where applicable, and the allocation of adequate resources to ensure that each of the elements is addressed.

[11] *See* United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3(k). The Federal Sentencing Guidelines are detailed policies and practices for the Federal

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Further, we believe that every hospice can implement most of our recommended elements that expand upon these seven steps. We recognize that full implementation of all elements may not be immediately feasible for all hospices. However, as a first step, a good faith and meaningful commitment on the part of the hospice administration, especially the governing body and the CEO, will substantially contribute to a program's successful implementation. As the compliance program is implemented, that commitment should cascade down through the management of the hospice to every employee at all levels in the organization.

At a minimum, comprehensive compliance programs should include the following seven elements:

(1) The development and distribution of written standards of conduct, as well as written policies and procedures, which promote the hospice's commitment to compliance and address specific areas of potential fraud, such as assessment of Medicare eligibility, quality assurance and financial relationships with nursing facilities and other health care professionals and entities;

(2) The designation of a compliance officer and other appropriate bodies, *e.g.*, a corporate compliance committee, charged with the responsibility for operating and monitoring the compliance program, and who report directly to the CEO and the governing body;[12]

(3) The development and implementation of regular, effective education and training programs for all affected employees;

(4) The creation and maintenance of a process, such as a hotline or other reporting system, to receive complaints and ensure effective lines of communication between the compliance officer and all employees, and the adoption of procedures to protect the anonymity of complainants and to protect whistleblowers from retaliation;

(5) The use of audits and/or other evaluation techniques to monitor compliance, identify problem areas, and assist in the reduction of identified problem areas;

(6) The development of appropriate disciplinary mechanisms to enforce standards and the development of policies to address (i) employees who have violated internal compliance policies, applicable statutes, regulations or Federal health care program requirements[13] and (ii) the employment of sanctioned and other specified individuals; and

(7) The development of policies that direct prompt and proper responses to detected offenses, including the initiation of appropriate corrective action and preventative measures.

A. Written Policies and Procedures

Every compliance program should require the development and distribution of written compliance policies, standards, and practices that identify specific areas of risk and vulnerability to the hospice. These policies, standards and practices should be developed under the direction and supervision of, or subject to review by, the compliance officer and compliance committee and, at a minimum, should be provided to all individuals who are affected by the particular policy at issue, including the hospice's agents and independent contractors.[14]

1. Standards of Conduct

Hospices should develop standards of conduct for all affected employees that include a clearly delineated commitment to compliance by the hospice's senior management[15] and its divisions, including affiliated providers operating under the hospice's control and other health care professionals (*e.g.*, hospice physicians,[16] nurses, physical therapists, occupational therapists, social workers, spiritual counselors, bereavement counselors and volunteers). Standards should articulate the hospice's commitment to comply with all Federal, State and private insurer standards, with an emphasis on preventing fraud and abuse. They should explicitly state the organization's mission, goals and ethical requirements of compliance and reflect a carefully crafted, clear expression of expectations for all hospice governing body members, officers, managers, employees, physicians, clinicians and, where appropriate, volunteers, contractors and other agents. These standards should promote integrity, support objectivity, and foster trust. Standards should not only address compliance with statutes and regulations, but should also set forth broad principles that guide employees in conducting business professionally and properly.

The standards should be distributed to, and comprehensible by, all affected employees (*e.g.*, translated into other languages when necessary and written at appropriate reading levels). Further, to assist in ensuring that employees continuously meet the expected high standards set forth in the code of conduct, any employee handbook delineating or expanding upon these standards of conduct should be regularly updated as applicable statutes, regulations and Federal health care program requirements are modified and/or clarified.[17]

criminal justice system that prescribe the appropriate sanctions for offenders convicted of Federal crimes.

[12] The integral functions of a compliance officer and a corporate compliance committee in implementing an effective compliance program are discussed throughout this compliance program guidance. However, the OIG recognizes that a hospice may tailor the structure of those positions in consideration of the size and design of the hospice, while endeavoring to address and accomplish all of the underlying objectives of a compliance officer and a corporate compliance committee. *See* section II.B. and accompanying notes.

[13] The term ''Federal health care programs'' is applied in this document as defined in 42 U.S.C. 1320a–7b(f), which includes any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (*i.e.*, via programs such as Medicare, Federal Employees' Compensation Act, Black Lung, or the Longshore and Harbor Worker's Compensation Act) or any State health plan (*e.g.*, Medicaid, or a program receiving funds from block grants for social services or child health services). Also, for the purposes of this document, the term ''Federal health care program requirements'' refers to the statutes, regulations, rules, requirements, directives and instructions governing Medicare, Medicaid and all other Federal health care programs.

[14] According to the Federal Sentencing Guidelines, an organization must have established compliance standards and procedures to be followed by its employees and other agents in order to receive sentencing credit for an ''effective'' compliance program. The Federal Sentencing Guidelines define ''agent'' as ''any individual, including a director, an officer, an employee or an independent contractor, authorized to act on behalf of the organization.'' *See* United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3.

[15] The OIG strongly encourages high-level involvement by the hospice's governing body, CEO, chief operating officer, general counsel, and chief financial officer, as well as other medical or clinical personnel, as appropriate, in the development of standards of conduct. Such involvement should help communicate a strong and explicit statement of compliance goals and standards.

[16] When the term ''hospice phyisican'' is applied in this document, it refers to the hospice's medical director or the physician member of a hospice's Interdisciplinary Group. The ''Interdisciplinary Group,'' which is composed of at least a doctor of medicine or osteopathy, registered nurse, medical social worker, and pastoral or other counselor, is responsible for: (1) participation in the establishment of the plan of care; (2) provision or supervision of hospice care and services; (3) periodic review and updating of the plan of care for each individual receiving hospice care; and (4) establishment of policies governing the day-to-day provision of hospice care and services. *See* 42 CFR 418.68.

[17] The OIG recognizes that not all standards, policies, and procedures need to be communicated to all employees. However, the OIG believes that the bulk of the standards that relate to complying with fraud and abuse laws and other ethical areas should be addressed and made part of all affected employees' training. The hospice must decide which additional educational programs should be limited to the different levels of employees, based on job functions and areas of responsibility.

When they first begin working for the hospice, and each time new standards of conduct are issued, employees should be asked to sign a statement certifying that they have received, read, and understood the standards of conduct. An employee's certification should be retained by the hospice in the employee's personnel file, and available for review by the compliance officer.

2. Risk Areas

The OIG believes that a hospice's written policies and procedures should take into consideration the particular statutes, rules, and program instructions that apply to each function or department of the hospice.[18] In contrast to the standards of conduct, which are designed to be a clear and concise collection of fundamental standards, the written policies should articulate specific procedures that hospice staff should follow.

Consequently, we recommend that these policies and procedures be coordinated with the appropriate training and educational programs, with an emphasis on areas of special concern that have been identified by the OIG through its investigative and audit functions.[19] Although the OIG concluded in a 1998 report that the Medicare hospice program seems to be working as intended,[20] compliance programs for hospices should still address areas of OIG concern that include:[21]

- Uninformed consent to elect the Medicare Hospice Benefit;[22]
- Admitting patients to hospice care who are not terminally ill;[23]
- Arrangement with another health care provider who a hospice knows is submitting claims for services already covered by the Medicare Hospice Benefit;[24]
- Under-utilization;[25]
- Falsified medical records or plans of care;[26]
- Untimely and/or forged physician certifications on plans of care;
- Inadequate or incomplete services rendered by the Interdisciplinary Group;[27]
- Insufficient oversight of patients, in particular, those patients receiving more than six consecutive months of hospice care;[28]
- Hospice incentives to actual or potential referral sources (*e.g.*, physicians, nursing homes, hospitals, patients, etc.) that may violate the anti-kickback statute or other similar Federal or State statute or regulation,[29]

[18] A hospice can conduct focus groups composed of managers from various departments to solicit their concerns and ideas about compliance risks that may be then addresses by the hospice's policies and procedures. Such employee participation in the development of the hospice's compliance program can promote its credibility and foster employee acceptance of the program.

[19] The OIG periodically issues Special Fraud Alerts setting forth activities believed to raise legal and enforcement issues. For example, *see* OIG Special Fraud Alert—''Fraud and Abuse in Nursing Home Arrangements with Hospices'' (March 1998); *see also* OIG Medicare Advisory Bulletin on Hospice Benefits (November 1995). Hospice compliance programs should require that the legal staff, compliance officer, or other appropriate personnel carefully consider any and all Special Fraud Alerts issued by the OIG that relate to hospices. Moreover, the compliance programs should address the ramifications of failing to cease and correct any conduct criticized in a Special Fraud Alert, if applicable to hospices, or to take reasonable action to prevent such conduct from reoccurring in the future. If appropriate, a hospice should take the steps described in section II.G. regarding investigations, reporting, and correction of identified problems.

[20] *See* OIG report OEI–04–93–00270—''Medicare Hospice Beneficiaries: Services and Eligibility.''

[21] Hospices may also want to consult the OIG's Work Plan when conducting the risk assessment. The OIG Work Plan details the various projects the OIG intends to address in the applicable fiscal year. It should be noted that the priorities in the Work Plan are subject to modification and revision as the year progresses and it does not represent a complete or final list of areas of concern to the OIG. The Work Plan is currently available on the Internet at http://www.dhhs.gov/progorg/oig.

[22] A hospice must ensure that an individual (or authorized representative) is informed about the palliative nature of the care and services that may be provided if the individual desires to elect the Medicare Hospice Benefit. 42 CFR 418.62. The decision to elect the Medicare Hospice Benefit has significant consequences because the patient waives the right to receive standard Medicare benefits related to the terminal illness, including all treatment for the purposes of curing the terminal illness. *See* 42 U.S.C. 1395d(d). A patient's hospice election statement must include the following items of information: (1) Identification of the particular hospice that will provide care to the individual; (2) the individual's or representative's acknowledgment that he or she has been given a full understanding of hospice care; (3) the individual's or representative's acknowledgment that he or she understands that certain Medicare services are waived by the election; (4) the effective date of the election; and (5) the signature of the individual or representative. See Medicare Hospice Manual § 210.

[23] For a hospice patient to receive reimbursement for hospice services under Medicare, the patient must be ''terminally ill.'' *See* 42 U.S.C. 1395d(a). An individual is considered to be ''terminally ill'' if the individual has a medical prognosis that the individual's life expectancy is six months or less if the illness runs its normal course. 42 CFR 418.3. In March 1995, Operation Restore Trust (ORT), a joint initiative, was established between the OIG, HCFA, and Administration on Aging. Among its projects, ORT assessed the medical eligibility for hospice services in the five largest States in terms of Medicare spending (New York, Florida, Illinois, Texas and California). Through ORT activities, it was discovered that many beneficiaries receiving Medicare hospice benefits did not have a terminal illness as defined by Medicare. *See* OIG report A–05–96–00023—''Enhanced Controls Needed to Assure Validity of Medicare Hospice Enrollments.'' *See also* section II.A.3.a. and accompanying notes.

[24] When an individual makes an election to receive services covered by the Medicare Hospice Benefit, that individual waives the right to receive Medicare reimbursement for any treatment related to his or her terminal illness. Accordingly, a hospice should ensure it is not involved with a health care provider who the hospice knows submits claims for the following services that are unallowable for reimbursement under the Medicare Hospice Benefit: (1) Standard Medicare benefits for treatment of the terminal illness; (2) treatment by another hospice not arranged for by the patient's hospice; and (3) care from another provider that duplicates care the hospice is required to furnish. *See* 42 U.S.C. 1395d(d). It is expected that the hospice provider will work with other providers to coordinate care and ensure appropriate billing if these situations occur. Where a single episode of care culminates in an inpatient admission and also involves services by two different providers, the need for a clear record from both providers is critical.

[25] In other words, knowing denial of needed care in order to keep costs low. A hospice is accountable for the appropriate allocation and utilization of its resources in order to provide optimal care consistent with the needs of a patient, family and/or lawful representative. When a patient is receiving hospice care, the hospice is paid a predetermined fee for each day during the length of care, no matter how much care the hospice actually provides. This means that a hospice may have a financial incentive to reduce the number of services provided to each patient, because the hospice will get paid the same amount regardless of the number of services provided. The OIG has received complaints about hospices neglecting patient needs and ignoring reasonable requests for treatment, including complaints about limited availability of durable medical equipment for patients as their medical condition decreases and failure to provide continuous care for periods of crisis due to staff shortages. The OIG has also been alerted to improper utilization of services that occurs when a hospice encourages a patient to revoke the Medicare Hospice Benefit for the purpose of obtaining expensive care under the standard Medicare benefits, only to re-elect the Medicare Hospice Benefit when expensive care is no longer necessary.

[26] OIG investigations have revealed that certain hospices have falsified patient medical records and plans of care to exaggerate the negative aspects regarding a hospice patient's condition to justify reimbursement. *See* section II.A.3.b. and accompanying notes.

[27] Each hospice is required to have an ''Interdisciplinary Group'' of personnel. *See* 42 U.S.C. 1395x(dd)(2)(B). *See* note 16. Failure of the Interdisciplinary Group to meet its responsibilities may result in standard care. In addition, inadequate review of a hospice patient may result in improper reimbursement for services provided to a patient who fails to continue to be eligible for the Medicare Hospice Benefit.

[28] Since the enactment of the Balanced Budget Act of 1997, the Medicare Hospice Benefit is divided into the following benefit periods: (1) initial 90-day; (2) subsequent 90-day; and (3) unlimited number of 60-day benefit periods as long as the patient continues to meet program eligibility requirements. *See* 42 U.S.C. 1395d. At the beginning of each subsequent 60-day benefit period, the hospice physician must recertify that the patient is terminally ill. *See* 42 U.S.C. 1395f(a)(7). If the necessary oversight is not performed during the unlimited periods of care, a hospice may receive improper reimbursement for services provided to a patient who fails to continue to be eligible for the Medicare Hospice Benefit.

[29] Examples of arrangements that may run afoul of the anti-kickback statute include practices in which a hospice pays a fee to a physician for each certification of terminal illness, or provides nursing, administrative, and other services for free or below fair market value to physicians, nursing homes, hospitals and other potential referral sources with

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including improper arrangements with nursing homes;[30]

- Overlap in the services that a nursing home provides, which results in insufficient care provided by a hospice to a nursing home resident;[31]
- Improper relinquishment of core services and professional management responsibilities to nursing homes, volunteers and privately-paid professionals;[32]
- Providing hospice services in a nursing home before a written agreement has been finalized, if required;[33]
- Billing for a higher level of care than was necessary;[34]
- Knowingly billing for inadequate or substandard care;
- Pressure on a patient to revoke the Medicare Hospice Benefit when the patient is still eligible for and desires care, but the care has become too expensive for the hospice to deliver;[35]
- Billing for hospice care provided by unqualified or unlicensed clinical personnel;[36]
- False dating of amendments to medical records;[37]
- High-pressure marketing of hospice care to ineligible beneficiaries;[38]
- Improper patient solicitation activities, such as ''patient charting;''[39]
- Inadequate management and oversight of subcontracted services, which results in improper billing;[40]
- Sales commissions based upon length of stay in hospice;[41]
- Deficient coordination of volunteers;[42]
- Improper indication of the location where hospice services were delivered;[43]

the intent to influence referrals. *See* 42 U.S.C. 1320a–7b; 60 FR 40847 (1995). *See also* discussion in section II.A.4. and accompanying notes. In addition, a hospice that offers an incentive to an individual that such hospice knows or should know is likely to influence the individual to use a particular hospice may be subject to civil money penalties. *See* 42 U.S.C. 1320a–7a(a)(5).

[30] The OIG has observed instances of potential kickbacks between hospices and nursing homes to unlawfully influence the referral of patients. In general, payments by a hospice to a nursing home for ''room and board'' provided to a Medicaid hospice patient should not exceed what the nursing home otherwise would have received directly from Medicaid if the patient had not been enrolled in hospice. (If a patient receiving Medicare hospice benefits in a nursing home is also eligible for Medicaid, Medicaid will pay the hospice at least 95 percent of the State's daily nursing home rate, and the hospice is then responsible for paying the nursing home for the patient's room and board.) See Hospice Medicare Manual § 204.2. *See also* section II.A.4. and accompanying notes.

[31] There may be some overlap in the services that the nursing homes and hospices provide, thereby providing one or the other the opportunity to reduce services and costs. Recent OIG reports found that residents of certain nursing homes receive fewer services from their hospice than patients who receive hospice services in their own homes. Upon review, it was found that many nursing home hospice patients were receiving only basic nursing and aide visits that were provided by nursing home staff as part of room and board when hospice staff were not present. Other additional treatments provided by hospice staff, such as nursing and aide visits, were often clearly within the professional skills possessed by nursing home staff. The reports found that the nature of services provided by hospice staff, while appropriate and efficacious, appeared to differ little from services a nursing home would have provided if the patient was not enrolled in hospice. *See* OEI report OEI–05–95–00250—''Hospice Patients in Nursing Homes;'' *see also* OIG report A–05–96–00023—''Enhanced Controls Needed to Assure Validity of Medicare Hospice Enrollments.'' Since hospices receive a fixed daily payment regardless of the number of services provided or the location of the patient, fewer services may result in higher profits per patient. *See also* section II.A.3.e. and accompanying notes.

[32] Certain of the hospice services (*i.e.*. ''core services'' such as nursing, medical, social, and counseling services) must be provided directly to the patient by employees of the hospice, while other non-core hospice services may be provided at fair market value in accordance with contracts with other providers. However, the hospice must retain professional management for all contracted services. *See* 42 CFR 418.80.

[33] A patient who resides in a skilled nursing facility or nursing facility may elect the Medicare Hospice Benefit if: (1) the residential care is paid for by (a) the beneficiary or private insurance, or (b) Medicaid (if the beneficiary is dual eligible); *and* (2) the hospice and facility have a written agreement under which the hospice takes full responsibility for the professional management of the individual's hospice care and the facility agrees to provide room and board. Hospice Medicare Manual § 204.2

[34] Billing for unnecessary services involves knowingly seeking reimbursement for services that ''are not reasonable and necessary for the palliation or management of terminal illness.'' *See* 42 U.S.C. 1395y(a)(1)(C). Because HCFA establishes different payment amounts for specific categories of covered hospice care, a hospice must ensure that it provides services to hospice patients that are reasonable and necessary. Otherwise, the hospice may be reimbursed for a higher level of care than was necessary, *e.g.*, a hospice that provides and bills for continuous care where only routine home care is necessary. *See also* section II.A.3.d. and accompanying notes.

[35] Fiscal intermediaries have informed the OIG that hospices rarely offer the reasons supporting the revocation of a patient's Medicare Hospice Benefit. Although a hospice may discharge a patient if it discovers that the patient is not terminally ill, hospices should not encourage a patient to revoke the benefit merely to avoid the obligation to pay for hospice services that have become too costly. *See* 42 CFR 418.28; Hospice Medicare Manual § 210.

[36] Medicare conditions of participation require that hospices and all hospice employees must be licensed in accordance with applicable Federal, State and local laws and regulations. 42 CFR 418.72.

[37] If additions or corrections need to be made to medical records, hospices should make such entries according to standards of practice and applicable State law. For example, hospices might correct a medical record by drawing a single line through the erroneous entry, writing ''error'' next to the entry, initialing and dating the correction and writing the correct information near the entry or writing where the correct information could be found.

[38] Hospices should not utilize prohibited or inappropriate conduct (*e.g.*, offer free gifts or services to patients), designed to maximize business growth and patient retention, to carry out their initiatives and activities. Also, any marketing information offered by hospices should be clear, correct, non-deceptive, and fully informative. Through ORT, it was discovered that hospice marketing materials had placed considerable emphasis on the availability of hospice benefits for long term care patients, while downplaying or ignoring the terminal illness eligibility requirement. *See* OIG report A–05–96–00023—''Enhanced Controls Needed to Assure Validity of Medicare Hospice Enrollments.'' Hospices should not engage in marketing and sales strategies that offer incomplete or inadequate information about Medicare entitlement under the Medicare Hospice Benefit to induce beneficiaries to elect hospice and thereby waive aggressive treatment options that Medicare would otherwise cover. Marketing statements should not create the perception that the initial terminal prognosis is of limited importance and that hospice benefits may almost routinely be provided over an indefinite time period. Marketing materials should prominently feature the eligibility requirements for the Medicare Hospice Benefit.

[39] An example of an improper review of patient records is when a hospice arranges with the administration of a nursing facility to review patient records without the patent's permission, solely to determine if the patients are eligible for hospice care and to solicit hospice referrals. Hospices should not review medical records of nursing home patients in an attempt to recruit patients for hospice services based on their diagnoses. For instance, *see* OIG report A–05–96–00023—''Enhanced Controls Needed to Assure Validity of Medicare Hospice Enrollments.''

[40] The Balanced Budget Act of 1997, Pub.L. 105–33, amended the Social Security Act so that hospices will no longer be required to routinely provide all physician services directly by employing a physician. *See* 42 U.S.C. 1395x(dd)(2). Because the OIG has received reports of limited involvement displayed by contracted physicians, as opposed to hospice-employed physicians, hospices should consider having oversight mechanisms in place to ensure that hospice physicians are thoroughly reviewing re-certification documentation.

[41] Through ORT activities, it was discovered that hospice sales staff often were paid on commission based on the length of a patient's stay in hospice. For example, commission amounts were determined by multiplying the total number of days of hospice patient care (patient days) within a sales representative's territory by a factor that reflected the level of achievement of assigned sales performance objectives. Such marketing tactics encouraged the recruitment of long-term patients, many of whom the review found ineligible for the Medicare Hospice Benefit. The OIG recommends that hospices monitor sales commissions for potential vulnerabilities associated with improper patient recruiting. *See* OIG report A–05–96–00023—''Enhanced Controls Needed to Assure Validity of Medicare Hospice Enrollments.''

[42] Hospices rely heavily on volunteer support. In fact, the Medicare Hospice Benefit is the only Federally funded program that mandates the provision of volunteer services. Appropriately, hospices need to recognize and attend to compliance issues associated with volunteers (*i.e.*, screening, training, disciplining, monitoring, etc.)

[43] Medicare payments for hospice services are made on a prospective basis and adjusted by an area wage index. Hospices must submit claims based on the geographic location at which the service is furnished and not the location of the hospice. Incorrect designation of the place of service for revenue codes 651 and 652 of the hospice claim may significantly alter reimbursement and result in overpayment for services performed (*e.g.*, hospice office in a metropolitan area may be reimbursed more than a rural home where the services were performed).

• Failure to comply with applicable requirements for verbal orders for hospice services; [44]

• Non-response to late hospice referrals by physicians; [45]

• Knowing misuse of provider certification numbers, which results in improper billing; [46]

• Failure to adhere to hospice licensing requirements and Medicare conditions of participation; [47] and

• Knowing failure to return overpayments made by Federal health care programs.[48] A hospice's prior history of noncompliance with applicable statutes, regulations and Federal health care program requirements may indicate additional types of risk areas where the hospice may be vulnerable and that may require policies and procedures to prevent recurrence. [49] Additional risk areas should be assessed by hospices as well as incorporated into the written policies and procedures and training elements developed as part of their compliance programs.

3. Eligibility Requirements

Of the risk areas identified above, those pertaining to the Medicare eligibility requirements have been the frequent subject of investigations and audits. With respect to the reimbursement process, a hospice's written policies and procedures should reflect and reinforce current Federal health care requirements regarding the eligibility for Medicare reimbursement. The policies must create a mechanism for the billing or reimbursement staff to communicate effectively and accurately with the clinical staff. Policies and procedures should:

• Provide for complete and timely documentation of the specific clinical factors that qualify a patient for the Medicare Hospice Benefit; [50]

• Delineate who has authority to make entries in the patient record;

• Emphasize that patients should be admitted to hospice care only when appropriate documentation supports the applicable reimbursement eligibility criteria and only when such documentation is maintained, appropriately organized in a legible form, and available for audit and review. The documentation should record the activity leading to the record entry and the identity of the individual providing the service. Documentation should be consistent and any discrepancies discussed and reconciled. The hospice should consult with its physicians, clinical staff and/or governing body to establish other appropriate documentation guidelines;

• Indicate that the diagnosis and procedure codes for hospice services reported on the reimbursement claim should be based on the patient's clinical condition as reflected in the medical record and other documentation, and should comply with all applicable official coding rules and guidelines. Any Health Care Financing Administration Common Procedure Coding System (HCPCS), International Classification of Disease (ICD), or revenue code (or successor codes) used by the billing staff should accurately describe the service that was ordered by the physician and performed by the hospice. The documentation necessary for accurate billing should be available to billing staff; and

• Provide that the compensation for hospice admission personnel, billing department personnel and billing consultants should not offer any financial incentive to bill for hospice care regardless of whether applicable eligibility criteria for reimbursement is met.

The written policies and procedures concerning proper billing should reflect the current reimbursement principles set forth in applicable regulations and should be developed in tandem with private payor and organizational standards. Particular attention should be paid to issues associated with patient election of the Medicare Hospice Benefit, certification of terminal illness of a patient, development and certification of a patient's interdisciplinary plan of care and reasonableness and necessity of the level of hospice care provided. [51]

a. Terminal Illness as an Eligibility Requirement. For a hospice patient to receive reimbursement for hospice services under Medicare,[52] the patient must be ''terminally ill.'' [53] Hospices should create oversight mechanisms to ensure that the terminal illness of a Medicare beneficiary is verified [54] and

[44] Hospice staff must make an appropriate entry in the patient's medical record as soon as they receive a verbal certification of terminal illness and file written certifications in the medical record. *See* 42 CFR 418.22(d). State regulations may require that verbal and telephone orders from physicians should only be accepted by individuals authorized by State law to accept such orders. The OIG recommends that those authorized individuals accepting verbal and telephone orders should record, date and sign these orders and the physician(s) who ordered the service or treatment should countersign them no later than the time period required by State regulations.

[45] We have received comments expressing concern over late hospice referrals by physicians. While the onus of a timely hospice referral may be on a physician, a hospice should identify untimely referrals and provide adequate follow-up to the physicians. When hospice referrals are late, terminally ill patients may be unnecessarily denied access to the Medicare Hospice Benefit, hospices may have to admit a patient at the costliest stage of terminal illness, and quality of care may be affected because of patients being too far along to receive the optimum benefits of hospice care. Hospices need to work closely with physicians to educate and remind them as to the sensitivities and risks associated with untimely referrals. The OIG supports appropriate efforts to increase access to hospice care for eligible individuals.

[46] *E.g.*, transfer of a patient from one hospice to another hospice owned by the same company to circumvent applicable reimbursement caps.

[47] *See* 42 CFR 418.50–418.100 for the Medicare conditions of participation that apply to hospices.

[48] An overpayment is the amount of money a hospice may have received in excess of the amount due and payable under a health care program. Examples of overpayments include, but are not limited to, instances where a hospice is: (1) Paid twice for the same service either by Medicare or by Medicare and another insurer; or (2) paid for care rendered to patients who are not terminally ill or are otherwise ineligible for the Medicare Hospice Benefit. For instance, *see* Hospice Medicare Manual § 307. The OIG strongly recommends that the hospice institute procedures to detect overpayments and to promptly remit such overpayments to the affected payor. *See* 42 U.S.C. 2320a–7b(a)(3), which provides criminal penalties for failure to disclose an overpayment. *See also* 18 U.S.C. 669.

[49] ''Recurrence of misconduct similar to that which an organization has previously committed casts doubt on whether it took all reasonable steps to prevent such misconduct'' and is a significant factor in the assessment of whether a compliance program is effective. See United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3(k)(iii).

[50] Each patient's clinical record must contain: (1) The initial and subsequent assessments (including hospice admission history, certification, and recertification); (2) the plan of care; (3) identification data; (4) consent and authorization and election forms; (5) pertinent medical history; and (6) complete documentation of all services and events (including evaluations, treatments, progress notes, etc.) *See* CFR 418.74.

[51] The OIG has undertaken numerous audits, investigations, inspections, and national enforcement initiatives aimed at reducing potential and actual fraud, abuse and waste. For example, *see* OIG report A–05–96–00023—''Enhanced Controls Needed to Assure Validity of Medicare Hospice Enrollments;'' *see also* OIG Special Fraud Alert—''Fraud and Abuse in Nursing Home Arrangements with Hospices'' (March 1998); OIG Medicare Advisory Bulletin on Hospice Benefits (November 1995).

[52] 42 U.S.C. 1395d(a) authorizes the reimbursement of hospice care.

[53] An individual is considered to be ''terminally ill'' if the individual has a medical prognosis that the individual's life expectancy is six months or less if the illness runs its normal course. 42 CFR 418.3. However, the fact that a hospice patient lives beyond this six month period, in and of itself, does not constitute grounds for a determination that the patient was never eligible for hospice care, or that the services provided to the patient were not reimbursable by Medicare.

[54] Medical reviews, audits, inspections, and investigations of hospices have concluded that hospices have billed Medicare for hospice services provided to patients who are not terminally ill. For instance, *see* OIG report OEI–04–93–00270—''Medicare Hospice Beneficiaries: Services and Eligibility.'' Through Operation Restore Trust activities and the increased program integrity actions by the Regional Home Health Intermediaries (RHHIs), it was discovered that many beneficiaries receiving Medicare hospice benefits did not have a

Continued

the specific factors qualifying the patient as terminally ill are properly documented.[55] Any determinative assessment of the terminal illness of a Medicare beneficiary should be completed prior to billing Medicare for hospice care. Physicians must certify that the beneficiary was terminally ill at the time when a patient was admitted for hospice services as well as at the beginning of subsequent hospice benefit periods.[56]

The hospice's written policies and procedures should require, at a minimum, that:

- Before a patient is admitted for hospice services, the hospice physician and attending physician thoroughly review and certify the admitting diagnosis and prognosis;
- A patient's medical record contain complete documentation to support the certification made by the hospice physician or attending physician;[57]
- The patient or lawful representative is informed of the determination of the patient's life limiting condition;
- The patient or lawful representative is aware that the goal of hospice is directed toward relief of symptoms, rather than the cure of the underlying disease;
- A patient's medical condition and status is sufficiently reviewed during Interdisciplinary Group meetings; and
- The clinical progression/status of a patient's disease and medical condition are properly documented.

Hospices can further ensure compliance with the terminal illness requirement through discussions with Medicare beneficiaries and their families, reminding them that they must satisfy the regulatory requirements for terminal illness status to be eligible for Medicare coverage. These discussions can take place at the beginning of hospice election and during appropriate times throughout a patient's hospice care, *e.g.*, at time of recertification. Because the Medicare conditions of participation require hospices to give all beneficiaries an informed consent form that outlines their legal rights before furnishing them with hospice care,[58] providers can include reminders of terminal illness requirements in these forms.

The OIG recognizes that decisions to admit patients to hospices are often not based on medical factors alone. Such decisions are routinely influenced by non-medical factors that would generally be reflected in the plan of care. However, it is important to make a distinction between admitting a patient to a hospice program and certifying a patient for the Medicare Hospice Benefit. Based on an individual hospice's admission criteria, some patients may be admitted to hospice care prior to an estimated six months before death, as long as the hospice is paid fair market value for its services. Regardless, patients can be certified for the Medicare Hospice Benefit *only* when it is reasonable to conclude that a patient's life expectancy is six months or less if the illness runs its normal course. In other cases, alternative modes of reimbursement, often provided through community support, should be sought outside the Medicare Hospice Benefit.

b. Plan of Care. A hospice should take all reasonable steps to ensure that a written plan of care is established and maintained for each individual who receives hospice services, and that the care provided to that individual is in accordance with the plan.[59] The plan must be established by the patient's attending physician, the hospice physician, and the Interdisciplinary Group.[60] Each patient's needs should be continuously assessed and all treatment options explored and evaluated in the context of the patient's symptoms.[61] The hospice's written policies and procedures should require, at a minimum, that:

- Before the hospice bills for hospice care provided to a patient, the plan of care must be established by the hospice physician and the Interdisciplinary Group;[62]
- The plan of care includes: (i) An assessment of the hospice patient's needs and identification of services, including the management of discomfort and symptom relief, and (ii) the scope and frequency of services, in detail, needed to meet the patient's and family's needs;[63]
- The plan of care must be reviewed and updated, at intervals specified in the plan, by the attending physician, hospice physician and the Interdisciplinary Group;[64]
- The hospice properly documents any review or update of a hospice patient's plan of care by the attending physician, the hospice physician and Interdisciplinary Group; and[65]
- The hospice regularly reviews the appropriateness of Interdisciplinary Group services and level of services being provided, patient admission to hospice, patient length of stay delays and specific treatment modalities.

c. Utilization of Hospice Services. A hospice is accountable for the appropriate allocation and utilization of its resources in order to provide optimal care consistent with patient and family needs.[66] Accordingly, a hospice should monitor and evaluate its resource allocation regularly to identify and resolve problems with the utilization of services, facilities and personnel. To achieve such monitoring, a hospice should schedule Interdisciplinary Group case reviews and conferences,[67]

terminal illness. In the review of hospice cases between 1992 and 1996, patients did not demonstrate significant clinical symptoms of their disease nor notable functional limitations one would expect to see in a person who has a terminal illness as defined by Medicare. See OIG report A–05–96–00023—''Enhanced Controls Needed to Assure Validity of Medicare Hospice Enrollments.'' Findings such as these have prompted a concern that some hospices may intentionally misrepresent a condition as terminal in order to secure Medicare reimbursement. *See also* note 23.

[55] *See* 42 CFR 418.22(d). If a question is raised as to whether a patient is terminally ill, the hospice will be requested to furnish its Medicare fiscal intermediary with the information necessary to establish that the patient is terminally ill.

[56] *See* 42 U.S.C. 1395f(a)(7). *See also* note 28.

[57] In order to verify a patient's terminal illness, Medicare fiscal intermediaries need to review physician input and rationale beyond a signature on the certification form (*e.g.*, a recent medical history and physical if the physician does not actually examine the patient prior to admission to hospice; summary of physician review of the history and physical taken by hospice personnel; or physician documentation of his or her contribution to the Interdisciplinary Group meetings).

[58] *See* 42 CFR 418.62.

[59] *See* 42 U.S.C. 1395f(a)(7); 42 CFR 418.58.

[60] *Id.*

[61] Some ORT audits found that hospice physicians, at times, rely partly on referring, attending physicians. Although the referring physician's opinion can and should be considered as part of the decision making process, the final determination of hospice eligibility is the responsibility of the hospice physician. For instance, *see* OIG report A–04–95–02111. If employees of a hospice believe that services ordered by a physician are excessive or otherwise inappropriate, the hospice cannot avoid liability for filing improper claims simply because a physician has certified the need for hospice care.

[62] For Medicare reimbursement purposes, the services of the hospice medical director(s) or the physician member of the Hospice Interdisciplinary Group must be performed by a doctor of medicine or osteopathy. *See* 42 CFR 418.202. The hospice should employ reasonable measures to verify that physicians who establish the hospice plan are appropriately licensed and no adverse actions, such as criminal conviction, debarment or an exclusion, have been taken against them.

[63] 42 CFR 418.58(c).

[64] *See* 42 U.S.C. 1395f(a)(7)(B); 42 U.S.C. 1395x(dd)(2)(B).

[65] 42 CFR 418.58(b).

[66] Once a Medicare beneficiary elects hospice care, the hospice is responsible for furnishing directly, or arranging for, all supplies and services that relate to the beneficary's terminal condition, except the services of an attending physician. Hospice beneficiaries have the right to receive covered medical, social and emotional support services from the hospice directly, or through arrangements made by the hospice, and should not be forced to seek or pay for such care from non-hospice providers.

[67] Interdisciplinary Group conferences are regularly scheduled periodic meetings of the Interdisciplinary Group to review the most current patient/family assessment, evaluate needs and update the plan of care.

review specific problems that may arise with services provided and use objective written criteria or treatment protocols to guide decisions about the utilization of hospice services provided. Utilization concerns may be an indication of a problem with the quality or quantity of services provided to a hospice patient or demonstrate a more fundamental concern as to the patient's eligibility for the Medicare Hospice Benefit in the first place. Therefore, a hospice should implement policies and procedures to identify, assess and rectify any problems associated with:

- Appropriateness of Interdisciplinary Group services and level of services being provided;
- Appropriateness of patient admission to hospice;
- Regular review of patient length of stay;
- Delays in admission or in the provision of Interdisciplinary Group services; and
- Specific treatment modalities.

When utilization problems are identified, a hospice should implement corrective actions and preventative measures that may include ongoing monitoring, changes in the provision of services and revisions of policies and procedures.

d. Levels of Hospice Care. A hospice's compliance program should provide that it should only seek reimbursement for services that the hospice has reason to believe are reasonable and necessary [68] for the palliation or management of terminal illness and were ordered by a physician or other appropriately licensed individual. The OIG recommends the hospice's compliance program communicate to physicians authorized to certify patients for hospice care and hospice personnel authorized to admit patients for hospice care that services will only be paid if ordered, certified, covered, reasonable and necessary for the patient, given his or her clinical condition.

Although hospice services are reimbursed on a per diem basis and not per individual component of the services performed, the payment is based upon the level of care provided.[69] Because HCFA establishes different payment amounts for specific categories of covered hospice care, a hospice must ensure that it provides for services to hospice patients that are reasonable and necessary. Otherwise, the hospice may be reimbursed for a higher level of services than was necessary, *e.g.*, a hospice that provides and bills for continuous care where only routine home care is necessary.

As a preliminary matter, the OIG recognizes that licensed health care professionals must be able to order any services that are appropriate for the care of their patients. However, Medicare and other Government and private health care plans will only pay for those services otherwise covered that meet appropriate standards (*i.e.*, in the case of Medicare, ''reasonable and necessary'' services). Providers may not bill for services that do not meet the applicable standards.[70] The hospice is in a unique position to deliver this information to the health care professionals on its staff and to the physicians who certify hospice services. Upon request, a hospice must be able to provide documentation, such as physician orders and other patient medical records, to support the level of services provided to a hospice patient.[71] The compliance officer should ensure that a clear, comprehensive summary of the definitions for the different levels of hospice care [72] and applicable rules of the various Government and private plans is prepared, disseminated, and explained to appropriate hospice personnel.

We recommend that hospices formulate policies and procedures that include periodic clinical reviews, both prior and subsequent to billing for services, as a means of verifying that patients are receiving only reasonable and necessary services. As part of such reviews, hospices should examine the level, frequency, and duration of the services they perform to determine, in consultation with a physician, whether patients' medical conditions justify the level of services provided and billed. A hospice may choose to incorporate this clinical review function into pre-existing quality assurance mechanisms or any other quality assurance processes that are part of its conditions of participation.[73]

e. Services Provided to Hospice Patients in Nursing Homes. Hospice services may be appropriate and beneficial to terminally ill nursing home residents who wish to receive palliative care.[74] However, the OIG has found hospices that enroll nursing home patients in hospice care are particularly vulnerable to fraud and abuse.[75] Appropriately, a hospice should set sufficient oversight controls in place to ensure that care it provides to nursing home residents is appropriate, complete, and in accordance with applicable laws and Federal health care program requirements.

When a resident of a nursing home elects the Medicare Hospice Benefit, the hospice and the nursing home should jointly establish a coordinated plan of care that reflects the hospice philosophy, and is based on an assessment of the individual's needs and unique living situation in the nursing home. The coordinated plan should identify the care and services that the nursing home will provide to be responsive to the unique needs of the patient/resident and his or her expressed desire for hospice care.

In general, a hospice should involve nursing home personnel in assisting with the administration of a patient's prescribed therapies included in the plan of care only to the extent that the hospice would routinely utilize the services of a hospice patient's family/caregiver in implementing the plan of care.[76] To satisfy the applicable Medicare conditions of participation in the nursing home context, hospices should implement policies and procedures to ensure that:

- The hospice makes all covered services available to meet the needs of a patient and does not routinely discharge patients in need of costly inpatient care; [77]

[68] *See* note 34.

[69] Payment amounts are determined within each of the following categories: (1) routine home care day; (2) continuous home care day (patient who receives hospice care that consists predominantly of nursing care on a continuous basis at home, is furnished only during brief periods of crisis and only as necessary to maintain the terminally ill patient at home); (3) inpatient respite care day (hospice patient receives care in an approved facility on a short-term basis for respite—not more than five consecutive days at a time); and (4) general inpatient care day (hospice patient receives general inpatient care in an inpatient facility for pain control or acute or chronic symptom management that cannot be managed in other settings). *See* 42 CFR 418.302.

[70] Administrative civil money penalties, assessments, and exclusion, as well as remedies available under criminal and civil law, including the civil False Claims Act, may be imposed against any person who submits a claim for services ''that [the] person knows or should know are not medically necessary.'' *See, e.g.,* 42 U.S.C. 1320a–7a(a).

[71] Medicare fiscal intermediaries have the authority to require hospices that furnish items or services under the program to submit documentation that substantiates services were actually provided and medically necessary. *See* Medicare Intermediary Manual § 3116.1.B.

[72] *See* note 69.

[73] *See* 42 CFR 418.66.

[74] *See* note 33.

[75] In some cases reviewed in nursing homes, OIG medical reviewers have found that while the hospice benefit may eventually have been appropriate, at the time of election, patients were stable and the electionof hospice was premature. *See* OEI report OEI–05–95–00250: ''Hospice Patients in Nursing Homes;'' *see also* OIG report A–05–96–00023—''Enhanced Controls Needed to Assure Validity of Medicare Hospice Enrollments.'' For other examples of potential fraud and abuse in the hospice/nursing home context, *see* notes 30–33.

[76] Hospice Certification Manual § 2082.B.

[77] *See* 42 CFR 418.50.

• The hospice retains professional responsibility for services (e.g., personal care, nursing, medication for relieving pain control) furnished by nursing home staff; [78]

• All the care furnished by a nursing home related to the terminal illness or related conditions is in accordance with the hospice plan of care; [79]

• The hospice and the nursing home communicate with each other when any changes are indicated to the plan of care, and each provider is aware of the other's responsibilities in implementing the plan of care and complete those respective functions; [80]

• Evidence of the coordinated plan of care is present in the clinical records of both providers; [81]

• Substantially all the core services are routinely provided directly by hospice employees [82] and the hospice does not rely on employees of the inpatient facility to furnish needed nursing, physician, counseling, or medical social services; [83] and

• The hospice keeps its forms and documentation of services separate from the nursing home's forms and documentation.[84]

4. Anti-Kickback and Self-Referral Concerns

The hospice should have policies and procedures in place with respect to compliance with Federal and State anti-kickback statutes and other applicable laws.[85] Such policies should provide that:

• All of the hospices's contracts and arrangements with actual or potential referral sources are reviewed carefully for compliance with all applicable statutes and regulations; [86]

• The hospice does not submit or cause to be submitted to the Federal health care programs claims for patients who were referred to the hospice pursuant to contracts or financial arrangements that were designed to induce such referrals in violation of the anti-kickback statute or similar Federal or State statute or regulation; and

• The hospice does not offer or provide gifts, free services, or other incentives to patients, relatives of patients, physicians, nursing facilities, hospitals, contractors or other potential referral sources for the purpose of inducing referrals in violation of the anti-kickback statute or similar Federal or State statute or regulation.[87]

In particular, arrangements between nursing homes and hospices are vulnerable to fraud and abuse because nursing home operators have control over the specific hospice or hospices they will permit to provide hospice services to their residents.[88] Moreover, hospice patients residing in nursing homes may be particularly desirable from a hospice's financial standpoint.[89] Therefore, with respect to arrangements with nursing homes, a hospice should develop policies and procedures to prevent the following practices from occurring, which may constitute potential kickbacks:

• Hospice offering free or below fair market value goods to induce a nursing home to refer patients to the hospice;

• Hospice paying ''room and board'' payments to the nursing home in amounts in excess of what the nursing home would have received directly from Medicaid had the patient not been enrolled in hospice; [90]

• Hospice paying above fair market value for ''additional'' non-core services that Medicaid does not consider to be included in its ''room and board'' payments to the nursing home; [91]

• Hospice referring its patients to a nursing home to induce the nursing home to refer its patients to the hospice;

• Hospice providing free (or below fair market value) care to nursing home patients, for whom the nursing home is receiving Medicare payment under the Medicare Skilled Nursing Facility Benefit, with the expectation that after the patient exhausts the skilled nursing facility benefit, the patient will receive hospice services from that hospice; and

• Hospice providing staff at its expense to the nursing home to perform duties that otherwise would be performed by the nursing home.

Further, the policies and procedures should specifically reference and take into account the OIG's safe harbor regulations, which clarify those payment practices that would be immune from prosecution under the anti-kickback statute, as well as the OIG's civil money penalty and exclusion authorities.[92]

5. Retention of Records

Hospice compliance programs should provide for the implementation of a records system. This system should establish policies and procedures regarding the creation, distribution, retention, storage, retrieval and destruction of documents.[93] The two categories of documents developed under this system should include: (1) all records and documentation (*e.g.*, medical records, and billing and claims documentation) required either by Federal or State law for participation in Federal health care programs [94] or any other applicable Federal and State laws and regulations (*e.g.*, document retention requirements to maintain State licensure); and (2) all records necessary to protect the integrity of the hospice's compliance process and confirm the effectiveness of the program.

The second category includes: (1) Documentation that employees were adequately trained; (2) reports from the hospice's hotline, including the nature and results of any investigation that was conducted; (3) documentation of corrective action, including disciplinary action taken and policy improvements introduced, in response to any internal investigation or audit; (4) modifications

[78] *See* 42 CFR 418.56.

[79] *See* 42 CFR 418.58.

[80] Hospice Certification Manual § 2082.A.

[81] Hospice Certification Manual § 2082.A.

[82] *See* 42 CFR 418.80.

[83] In limited circumstances, HFCA may approve a waiver of the requirement for core nursing services to be provided by a hospice that is located in a non-urbanized area. *See* 42 CFR 418.83.

[84] A Hospice may consider creating some type of payroll tracking or time study in an effort to properly differentiate services between the hospice and the nursing home.

[85] The hospice's in-house counsel or compliance officer should, among other things, obtain copies of all relevant OIG regulations, Special Fraud Alerts and advisory opinions (these documents are located on the Internet at http://www.dhhs.gov/progorg/oig), and ensure that the hospice's policies reflect the guidance provided by the OIG.

[86] Although hospices may contract with physicians, *see* note 40, hospices and physicians mut still tailor such agreements to avoid violation of the anti-kickback statute or similar Federal or State statute or regulation and to comply with applicable Medicare conditions of participation. *See* 42 CFR 418.56 and 418.86.

[87] *See* 42 U.S.C. 1320a–7b(b); 60 FR 40847 (1995).

[88] While an exclusive or semi-exclusive arrangement with a nursing home to provide hospice services to residents can promote efficiency and safety by permitting the nursing home operator to coordinate care, screen hospice caregivers, and maintain control of the premises, such an arrangement may have substantial monetary value to a hospice. In these circumstances, some nursing home operators and/or hospices may request or offer illegal remuneration to influence a nursing home's decision to do business with a particular hospice.

[89] First, a nursing home's population represents a sizeable pool of potential hospice patients. Second, nursing home hospice patients may generate higher gross revenues per patient than patients residing in their own homes, because nursing home residents receiving hospice care have, on average, longer lengths of stay than hospice patients residing in their own homes.

[90] *See* note 30.

[91] *See* OIG Special Fraud Alert—''Fraud and Abuse in Nursing Home Arrangements with Hospices'' (March 1998).

[92] *See* 42 CFR 1001.952.

[93] This records system should be tailored to fit the individual needs and financial resources of the hospice.

[94] For example, Medicare requires that hospices must establish and maintain a clinical record for every individual receiving care and services. The record must be complete, promptly and accurately documented, readily accessible and systematically organized to facilitate retrieval. Any entries are to be made and signed by the person providing the services. *See* 42 CFR 418.74.

to the compliance program; (5) self-disclosures; and (6) the results of the hospice's auditing and monitoring efforts.[95]

6. Compliance as an Element of a Performance Plan

Compliance programs should require that the promotion of, and adherence to, the elements of the compliance program be a factor in evaluating the performance of all employees, who should be periodically trained in new compliance policies and procedures. In addition, all managers and supervisors should:

- Discuss with all supervised employees and relevant contractors the compliance policies and legal requirements pertinent to their function;
- Inform all supervised personnel that strict compliance with these policies and requirements is a condition of employment; and
- Disclose to all supervised personnel that the hospice will take disciplinary action up to and including termination for violation of these policies or requirements.

In addition to making performance of these duties an element in evaluations, a compliance program should include a policy for sanctioning managers and supervisors who fail to adequately instruct their subordinates or fail to detect noncompliance with applicable policies and legal requirements, where reasonable diligence on the part of the manager or supervisor would have led to the discovery of any problems or violations and given the hospice the opportunity to correct them earlier.

The OIG believes all hospices should ensure that its employees understand the importance of compliance. If a small hospice does not have a formal performance evaluation structure, it should informally convey the employee's compliance responsibilities and the importance of these responsibilities in a written job description or orientation checklist. The applicable documentation should include a dated signature, with an indication that the employee has received it and will be responsible for adherence to the responsibilities expressed.

B. Designation of a Compliance Officer and a Compliance Committee

1. Compliance Officer

Every hospice should designate a compliance officer to serve as the focal point for compliance activities. This responsibility may be the individual's sole duty or added to other management responsibilities, depending upon the size and resources of the hospice and the complexity of the task. Designating a compliance officer with the appropriate authority is critical to the success of the program, necessitating the appointment of a high-level official in the hospice with direct access to the hospice's president or CEO, governing body, all other senior management, and legal counsel.[96] The officer should have sufficient funding and staff to perform his or her responsibilities fully. Coordination and communication are the key functions of the compliance officer with regard to planning, implementing and monitoring the compliance program.

The compliance officer's primary responsibilities should include:

- Overseeing and monitoring the implementation of the compliance program;[97]
- Reporting on a regular basis to the hospice's governing body, CEO and compliance committee (if applicable) on the progress of implementation, and assisting these components in establishing methods to improve the hospice's efficiency and quality of services, and to reduce the hospice's vulnerability to fraud, abuse and waste;
- Periodically revising the program in light of changes in the organization's needs, and in the law and policies and procedures of Government and private payor health plans;
- Reviewing employees' certifications that they have received, read and understood the standards of conduct;
- Developing, coordinating and participating in a multifaceted educational and training program that focuses on the elements of the compliance program, and seeks to ensure that all relevant employees and management are knowledgeable of, and comply with, pertinent Federal and State standards;
- Ensuring that independent contractors and agents who furnish physician, nursing, or other health care services to the clients of the hospice, or billing services to the hospice, are aware of the requirements of the hospice's compliance program with respect to eligibility, billing and marketing, among other things;
- Coordinating personnel issues with the hospice's Human Resources/Personnel office (or its equivalent) to ensure that: (i) The National Practitioner Data Bank[98] has been checked with respect to all medical staff and independent contractors (as appropriate) and (ii) the List of Excluded Individuals/Entities[99] has been checked with respect to all employees, medical staff and independent contractors (as appropriate);[100]
- Assisting the hospice's financial management in coordinating internal compliance review and monitoring activities, including annual or periodic reviews of departments;
- Independently investigating and acting on matters related to compliance, including the flexibility to design and coordinate internal investigations (*e.g.*, responding to reports of problems or suspected violations) and any resulting corrective action (*e.g.*, making necessary improvements to hospice policies and practices, taking appropriate disciplinary action, etc.) with all hospice departments, subcontracted providers and health care professionals under the hospice's control, and any other agents if appropriate; and
- Continuing the momentum of the compliance program and the accomplishment of its objectives long

[95] The creation and retention of such documents and reports may raise a variety of legal issues, such as patient privacy and confidentiality. These issues are best discussed with legal counsel.

[96] The OIG believes that it is not advisable for the compliance function to be subordinate to the hospice's general counsel, or comptroller or similar hospice financial officer. Free standing compliance functions help to ensure independent and objective legal reviews and financial analyses of the institution's compliance efforts and activities. By separating the compliance function from the key management positions of general counsel or chief financial officer (where the size and structure of the hospice make this a feasible option), a system of checks and balances is established to more effectively achieve the goals of the compliance program.

[97] For multi-hospice organizations or hospital-owned hospices, the OIG encourages coordination with each hospice owned by the corporation or hospital through the use of a headquarter's compliance officer, communicating with parallel positions in each facility, regional office or business line, as appropriate.

[98] The National Practitioner Data Bank is a data base that contains information about medical malpractice payments, sanctions by boards of medical examiners or State licensing boards, adverse clinical privilege actions and adverse professional society membership actions. Health care entities can have access to this data base to seek information about their own medical or clinical staff, as well as prospective employees or physician contractors.

[99] The List of Excluded Individuals/Entities is an OIG-produced report available on the Internet at http://www.dhhs.gov/progorg/oig. It is updated on a regular basis to reflect the status of health care providers who have been excluded from participation in the Medicare and Medicaid programs. In addition, the General Services Administration maintains a monthly listing of debarred contractors on the Internet at http://www.arnet.gov/epls.

[100] The compliance officer may also have to ensure that the criminal backgrounds of employees have been checked depending upon State requirements or hospice policy. *See* note 131.

after the initial years of implementation.[101]

The compliance officer must have the authority to review all documents and other information that are relevant to compliance activities, including, but not limited to, patient medical records, billing records, and records concerning the marketing efforts of the facility and the hospice's arrangements with other parties, including employees, physicians, professionals on staff, relevant independent contractors, suppliers, agents, and supplemental staffing entities. This policy enables the compliance officer to review contracts and obligations (seeking the advice of legal counsel, where appropriate) that may contain referral and payment provisions that could violate the anti-kickback statute and other legal or regulatory requirements.

A small hospice may not have the need or the resources to hire or appoint a full time compliance officer. However, each hospice should have a person in its organization (this person may have other functional responsibilities) who can oversee the hospice's compliance with applicable statutes, rules, regulations, and policies. The structure and comprehensiveness of the hospice's compliance program will help determine the responsibilities of each individual compliance officer.

2. Compliance Committee

The OIG recommends that a compliance committee be established to advise the compliance officer and assist in the implementation of the compliance program.[102] When developing an appropriate team of people to serve as the hospice's compliance committee, including the compliance officer, a hospice should consider a variety of skills and personality traits that are expected from those in such positions.[103] Once a hospice chooses the people that will accept the responsibilities vested in members of the compliance committee, the hospice needs to train these individuals on the policies and procedures of the compliance program, as well as how to discharge their duties.

The committee's functions should include:

- Analyzing the legal requirements with which it must comply, and specific risk areas;
- Assessing existing policies and procedures that address these risk areas for possible incorporation into the compliance program;
- Working with appropriate hospice departments to develop standards of conduct and policies and procedures to promote compliance with legal and ethical requirements;
- Recommending and monitoring, in conjunction with the relevant departments, the development of internal systems and controls to carry out the organization's standards, policies, and procedures as part of its daily operations;
- Determining the appropriate strategy/approach to promote compliance with the program and detection of any potential violations, such as through hotlines and other fraud reporting mechanisms;
- Developing a system to solicit, evaluate, and respond to complaints and problems; and
- Monitoring internal and external audits and investigations for the purpose of identifying troublesome issues and deficient areas experienced by the hospice, and implementing corrective and preventive action.

The committee may also address other functions as the compliance concept becomes part of the overall hospice operating structure and daily routine.

The compliance committee is an extension of the compliance officer and provides the organization with increased oversight. The OIG recognizes that small hospices may not have the resources or the need to establish a compliance committee. However, when potential problems are identified, the OIG recommends the small hospices supplier create a ''taskforce,'' if appropriate, to address the problem. The members of the taskforce may vary depending upon the issue.

C. Conducting Effective Training and Education

The proper education and training of corporate officers, managers, employees, volunteers, nurses, physicians, and other health care professionals, and the continual retraining of current personnel at all levels, are significant elements of an effective compliance program. As part of their compliance programs, hospices should require personnel to attend specific training on a periodic basis, including appropriate training in Federal and State statutes, regulations, and guidelines, and the policies of private payors, and training in corporate ethics, which emphasizes the organization's commitment to compliance with these legal requirements and policies.[104]

These training programs should include sessions highlighting the organization's compliance program, summarizing fraud and abuse laws, Federal health care program requirements, claim development and submission processes, patient rights, and marketing practices that reflect current legal and program standards. The organization must take steps to communicate effectively its standards and procedures to all affected employees, physicians, independent contractors, and other significant agents, *e.g.*, by requiring participation in training programs and disseminating publications that explain specific requirements in a practical manner.[105] Managers of specific departments or groups can assist in identifying areas that require training and in carrying out such training.[106] Training instructors may come from outside or inside the organization, but must be qualified to present the subject matter involved and experienced enough in the issues presented to adequately field questions and coordinate discussions among those being trained. New employees should be trained early in their employment.[107]

[101] Periodic on-site visits of hospice operations, bulletins with compliance updates and reminders, distribution of audiotapes or videotapes on different risk areas, lectures at management and employee meetings, circulation of recent health care articles covering fraud and abuse, and innovative changes to compliance training are various examples of approaches and techniques the compliance officer can employ for the purpose of ensuring continued interest in the compliance program and the hospice's commitment to its policies and principles.

[102] The compliance committee benefits from having the perspectives of individuals with varying responsibilities in the organization, such as operations, finance, audit, human resources, and clinical management (*e.g.*, hospice physician), as well as employees and managers of key operating units. These individuals should have the requisite seniority and comprehensive experience within their respective departments to implement any necessary changes to hospice policies and procedures as recommended by the committee.

[103] A health care provider should expect its compliance committee members and compliance officer to demonstrate high integrity, good judgment, assertiveness, and an approachable demeanor, while eliciting the respect and trust of employees of the hospice and having significant professional experience working with billing, clinical records, documentation, and auditing principles.

[104] Specific compliance training should complement any ''inservice'' training sessions that a hospice may regularly schedule to provide an ongoing program for the training of employees as required by its conditions of participation. 42 CFR 418.64.

[105] Some publications, such as OIG's Special Fraud Alerts, audit and inspection reports, and advisory opinions, as well as the annual OIG work plan, are readily available from the OIG and could be the basis for standards, educational courses, and programs for appropriate hospice employees.

[106] Significant variations in the functions and responsibilities of different departments or groups may create the need for training materials that are tailored to compliance concerns associated with particular operations and duties.

[107] Certain positions, such as those that involve the billing of hospice services or patient admission to hospice care, create a greater organizational legal exposure, and therefore require specialized training.

Training programs and materials should be designed to take into account the skills, experience, and knowledge of the individual trainees. The compliance officer should document any formal training undertaken by the hospice as part of the compliance program.

A variety of teaching methods, such as interactive training, and training in several different languages, particularly where a hospice has a culturally diverse staff, should be implemented so that all affected employees are knowledgeable of the institution's standards of conduct and procedures for alerting senior management to problems and concerns.[108] In addition to specific training in the risk areas identified in section II.A.2, above, primary training for appropriate corporate officers, managers, and other hospice staff should include such topics as:

- Government and private payor reimbursement principles;
- General prohibitions on paying or receiving remuneration to induce referrals;
- Improper alterations to clinical records;[109]
- Providing hospice services with proper authorization;
- Patient rights and patient education;
- Compliance with Medicare conditions of participation; and
- Duty to report misconduct.

Clarifying and emphasizing these areas of concern through training and educational programs are particularly relevant to a hospice's marketing and financial personnel, in that the pressure to meet business goals may render these employees vulnerable to engaging in prohibited practices.

The OIG suggests that all relevant levels of personnel be made part of various educational and training programs of the hospice.[110] Employees should be required to have a minimum number of educational hours per year, as appropriate, as part of their employment responsibilities.[111] For example, for certain employees involved in the hospice admission functions, periodic training in applicable reimbursement coverage and eligibility requirements should be required. In hospices with high employee turnover, periodic training updates are critical.

The OIG recognizes that the format of the training program will vary depending upon the resources of the hospice. For example, a small hospice may want to create a video for each type of training session so new employees can receive training in a timely manner.[112]

The OIG recommends that attendance and participation in training programs be made a condition of continued employment and that failure to comply with training requirements should result in disciplinary action, including possible termination, when such failure is serious. Adherence to the provisions of the compliance program, such as training requirements, should be a factor in the annual evaluation of each employee. The hospice should retain adequate records of its training of employees, including attendance logs and material distributed at training sessions.

D. Developing Effective Lines of Communication

1. Access to the Compliance Officer

An open line of communication between the compliance officer and hospice employees is equally important to the successful implementation of a compliance program and the reduction of any potential for fraud, abuse, and waste. Written confidentiality and non-retaliation policies should be developed and distributed to all employees to encourage communication and the reporting of incidents of potential fraud.[113] The compliance committee should also develop independent reporting paths for an employee to report fraud, waste, or abuse so that employees can feel comfortable reporting outside the normal chain of command and supervisors or other personnel cannot divert such reports.[114]

The OIG encourages the establishment of a procedure so that hospice personnel may seek clarification from the compliance officer or members of the compliance committee in the event of any confusion or question with regard to a hospice policy, practice, or procedure. Questions and responses should be documented and dated and, if appropriate, shared with other staff so that standards, policies, practices, and procedures can be updated and improved to reflect any necessary changes or clarifications. The compliance officer may want to solicit employee input in developing these communication and reporting systems.

2. Hotlines and Other Forms of Communication

The OIG encourages the use of hotlines,[115] e-mails, written memoranda, newsletters, suggestion boxes, and other forms of information exchange to maintain these open lines of communication.[116] If the hospice establishes a hotline, the telephone number should be made readily available to all employees and independent contractors, possibly by circulating the number on wallet cards or conspicuously posting the telephone number in common work areas.[117] Employees should be permitted to report matters on an anonymous basis. Matters reported through the hotline or other communication sources that suggest substantial violations of compliance policies, Federal health care program requirements, regulations, or statutes should be documented and investigated promptly to determine their veracity. A log should be maintained by the compliance officer that records such

[108] Post-training tests can be used to assess the success of training provided and employee comprehension of the hospice's policies and procedures.

[109] This practice involves the hospice altering the attending physician's or other authorized physician's diagnosis in order to receive reimbursement for hospice care. A hospice should not claim the patient has a particular medical condition in order to qualify for reimbursement for which it would not otherwise qualify.

[110] In addition, where feasible, the OIG recommends that a hospice afford outside contractors the opportunity to participate in the hospice's compliance training and educational programs, or develop their own programs that complement the hospice's standards of conduct, compliance requirements, and other rules and practices.

[111] Currently, the OIG is monitoring a significant number of corporate integrity agreements that require many of these training elements. The OIG usually requires a minimum of one to three hours annually for basic training in compliance areas. Additional training is required for specialty fields such as billing and marketing.

[112] If videos are utilized for compliance training, the OIG suggests that a hospice make an individual available to field questions from video trainees. In addition, those hospices that use video training should strongly consider requiring trainees to complete post training comprehension tests to ensure that trainees actively paid attention to the video.

[113] The OIG believes that whistleblowers should be protected against retaliation, a concept embodied in the provisions of the False Claims Act. *See* 31 U.S.C. 3730(h). In many cases, employees sue their employers under the False Claims Act's *qui tam* provisions out of frustration because of the company's failure to take action when a questionable, fraudulent, or abusive situation was brought to the attention of senior corporate officials.

[114] Hospices can also consider rewarding employees for appropriate use of established reporting systems.

[115] The OIG recognizes that it may not be financially feasible for a smaller hospice to maintain a telephone hotline dedicated to receiving calls about compliance issues. These companies may want to explore alternative methods, *e.g.*, outsourcing the hotline or establishing a written method of confidential disclosure.

[116] In addition to methods of communication used by current employees, an effective employee exit interview program could be designed to solicit information from departing employees regarding potential misconduct and suspected violations of hospice policy and procedures.

[117] Hospices should also post in a prominent, available area the HHS–OIG Hotline telephone number, 1–800–447–8477 (1–800–HHS–TIPS), in addition to any company hotline number that may be posted.

calls, including the nature of any investigation and its results.[118] Such information should be included in reports to the governing body, the CEO, and compliance committee.[119] Further, while the hospice should always strive to maintain the confidentiality of an employee's identity, it should also explicitly communicate that there may be a point where the individual's identity may become known or may have to be revealed in certain instances.

The OIG recognizes that assertions of fraud and abuse by employees who may have participated in illegal conduct or committed other malfeasance raise numerous complex legal and management issues that should be examined on a case-by-case basis. The compliance officer should work closely with legal counsel, who can provide guidance regarding such issues.

The OIG recognizes that protecting anonymity may be infeasible for small hospices. However, the OIG believes all hospice employees, when seeking answers to questions or reporting potential instances of fraud and abuse, should know to whom to turn to for attention and should be able to do so without fear of retribution.

E. Auditing and Monitoring

An ongoing evaluation process is critical to a successful compliance program. The OIG believes that an effective program should incorporate thorough monitoring of its implementation and regular reporting to senior hospice or corporate officers.[120] Compliance reports created by this ongoing monitoring, including reports of suspected noncompliance, should be maintained by the compliance officer and shared with the hospice's senior management and the compliance committee. The extent and frequency of the audit function may vary depending on factors such as the size and available resources, prior history of noncompliance, and the risk factors that a particular hospice confronts.

Although many monitoring techniques are available, one effective tool to promote and ensure compliance is the performance of regular, periodic compliance audits by internal or external auditors who have expertise in Federal and State health care statutes, regulations, and Federal health care program requirements. The audits should focus on the hospice's programs or divisions, including external relationships with third-party contractors, specifically those with substantive exposure to Government enforcement actions. At a minimum, these audits should be designed to address the hospice's compliance with laws governing kickback arrangements, claim development and submission, reimbursement, eligibility, and marketing. The audits and reviews should inquire into the hospice's compliance with the Medicare conditions of participation and the specific rules and policies that have been the focus of particular attention on the part of the Medicare fiscal intermediaries or carriers, and law enforcement, as evidenced by educational and other communications from OIG Special Fraud Alerts, OIG audits and evaluations, and law enforcement's initiatives.[121] In addition, the hospice should focus on any areas of concern that are specific to the individual hospice and have been identified by any entity, whether Federal, State or internal.

Monitoring techniques may include sampling protocols that permit the compliance officer to identify and review variations from an established baseline.[122] Significant variations from the baseline should trigger a reasonable inquiry to determine the cause of the deviation. If the inquiry determines that the deviation occurred for legitimate, explainable reasons, the compliance officer and hospice management may want to limit any corrective action or take no action. If it is determined that the deviation was caused by improper procedures, misunderstanding of rules, including fraud and systemic problems, the hospice should take prompt steps to correct the problem. Any overpayments discovered as a result of such deviations should be returned promptly to the affected payor, with appropriate documentation and a sufficiently detailed explanation of the reason for the refund.[123]

An effective compliance program should also incorporate periodic (at least annual) reviews of whether the program's compliance elements have been satisfied, *e.g.*, whether there has been appropriate dissemination of the program's standards, training, ongoing educational programs, and disciplinary actions, among other elements.[124] This process will verify actual conformance by all departments with the compliance program and may identify the necessity for improvements to be made to the compliance program, as well as the hospice's operations. Such reviews could support a determination that appropriate records have been created and maintained to document the implementation of an effective program.[125] However, when monitoring discloses that deviations were not detected in a timely manner due to program deficiencies, proper modifications must be implemented. Such evaluations, when developed with the support of management, can help ensure compliance with the hospice's policies and procedures.

As part of the review process, the compliance officer or reviewers should consider techniques such as:

- Visits and interviews of patients at their residences;
- Analysis of utilization patterns;
- Testing clinical and hospice admission staff on their knowledge of reimbursement coverage criteria (*e.g.*, present hypothetical scenarios of situations experienced in daily practice and assess responses);
- Assessment of existing relationships with physicians, nursing homes,[126] hospitals, and other potential referral sources;
- Unannounced mock audits and investigations;

[118] To efficiently and accurately fulfill such an obligation, the hospice should create an intake form for all compliance issues identified through reporting mechanisms. The form could include information concerning the date that the potential problem was reported, the internal investigative methods utilized, the results of the investigation, the corrective action implemented, the disciplinary measures imposed, and any identified overpayments and monies returned.

[119] Information obtained over the hotline may provide valuable insight into management practices and operations, whether reported problems are actual or perceived.

[120] Even when a hospice or group of hospices is owned by a larger corporate entity, the regular auditing and monitoring of the compliance activities of an individual hospice must be a key feature in any annual review. Appropriate reports on audit findings should be periodically provided and explained to a parent organization's senior staff and officers.

[121] *See also* section II.A.2.

[122] The OIG recommends that when a compliance program is established in a hospice, the compliance officer, with the assistance of department managers, should take a ''snapshot'' of their operations from a compliance perspective. This assessment can be undertaken by outside consultants, law or accounting firms, or internal staff, with authoritative knowledge of health care compliance requirements. This ''snapshot,'' often used as part of benchmarking analyses, becomes a baseline for the compliance officer and other managers to judge the hospice's progress in reducing or eliminating potential areas of vulnerability.

[123] In addition, when appropriate, as referenced in section G.2, below, reports of fraud or systemic problems should also be made to the appropriate governmental authority.

[124] One way to assess the knowledge, awareness, and perceptions of the hospice's employees is through the use of a validated survey instrument (*e.g.* employee questionnaires, interviews, or focus groups).

[125] Such records should include, but not be limited to, logs of horline calls, logs of training attendees, training agenda meaterials, and summaries of corrective action taken and improvments make to hospice policies as a result of compliance activities.

[126] *See* section II.A.3.e.

• Reevaluation of deficiencies cited in past surveys for Medicare conditions of participation;

• Examination of hospice complaint logs;

• Checking personnel records to determine whether any individuals who have been reprimanded for compliance issues in the past are among those currently engaged in improper conduct;

• Questionnaires developed to solicit impressions of a broad cross-section of the hospice's employees and staff;

• Evaluation of the timeliness of physician referrals and physician signatures for hospice certifications;

• Reviews of clinical documentation (*e.g.*, terminal illness certification, plan of care, nursing notes, etc.), financial records, and other source documents that support claims for reimbursement;

• Validation of qualifications of hospice physicians and other hospice staff, including verification of applicable state license renewals;

• Evaluation of written materials and documentation outlining the hospice's policies and procedures; and

• Trend analyses, or longitudinal studies, that uncover deviations, positive or negative, in specific areas over a given period.

The reviewers should:

• Have the qualifications and experience necessary to adequately identify potential issues with the subject matter that is reviewed;

• Be objective and independent of line management to the extent reasonably possible; [127]

• Have access to existing audit and health care resources, relevant personnel, and all relevant areas of operation;

• Present written evaluative reports on compliance activities to the CEO, governing body, and members of the compliance committee on a regular basis, but no less often than annually; and

• Specifically identify areas where corrective actions are needed.

Just as a hospice is required by its conditions of participation to conduct ''an ongoing, comprehensive, integrated, self-assessment of the quality and appropriateness of care provided,'' [128] the OIG believes that a hospice should monitor its compliance with the Federal health care program requirements in the same fashion. Furthermore, just as a hospice is required by its conditions of participation to use its quality assurance findings to correct identified problems and revise hospice policies if necessary to improve patient care,[129] the OIG believes that a hospice's management should take whatever steps are necessary to correct identified compliance problems and prevent them from recurring. In certain cases, subsequent reviews or studies would be advisable to ensure that the recommended corrective actions have been implemented successfully.

While conducting its monitoring and auditing efforts, as well as its daily operations, a hospice should document its efforts to comply with applicable statutes, regulations, and Federal health care program requirements. For example, where a hospice, in its efforts to comply with a particular statute, regulation or program requirement, requests advice from a Government agency (including a Medicare fiscal intermediary or carrier) charged with administering a Federal health care program, the hospice should document and retain a record of the request and any written or oral response. This step is extremely important if the hospice intends to rely on that response to guide it in future decisions, actions, or claim reimbursement requests or appeals. A log of oral inquiries between the hospice and third parties will help the organization document its attempts at compliance. In addition, the hospice agency should maintain records relevant to the issue of whether its reliance was ''reasonable'' and whether it exercised due diligence in developing procedures and practices to implement the advice.

The extent of a hospice's audit should depend on the hospice's identified risk areas and resources. If the hospice comes under Government scrutiny in the future, the Government will assess whether or not the hospice developed a comprehensive audit based upon identified risk areas and resources. If the Government determines the hospice failed to develop an adequate audit program, given its resources, the Government will be less likely to afford the hospice favorable treatment under the Federal Sentencing Guidelines.

F. Enforcing Standards Through Well-Publicized Disciplinary Guidelines

1. Discipline Policy and Actions

An effective compliance program should include guidance regarding disciplinary action for corporate officers, managers, employees, and other health care professionals who have failed to comply with the hospice's standards of conduct, policies and procedures, Federal health care program requirements, or Federal and State laws, or those who have otherwise engaged in wrongdoing, which have the potential to impair the hospice's status as a reliable, honest, and trustworthy health care provider.

The OIG believes that the compliance program should include a written policy statement setting forth the degrees of disciplinary actions that may be imposed upon corporate officers, managers, employees, physicians, and other health care professionals for failing to comply with the hospice's standards and policies and applicable statutes and regulations. Intentional or reckless noncompliance should subject transgressors to significant sanctions. Such sanctions could range from oral warnings to suspension, termination, or financial penalties, as appropriate. Each situation must be considered on a case-by-case basis to determine the appropriate sanction. The written standards of conduct should elaborate on the procedures for handling disciplinary problems and those who will be responsible for taking appropriate action. Some disciplinary actions can be handled by department or agency managers, while others may have to be resolved by a senior hospice administrator. Disciplinary action may be appropriate where a responsible employee's failure to detect a violation is attributable to his or her negligence or reckless conduct. Personnel should be advised by the hospice that disciplinary action will be taken on a fair and equitable basis. Managers and supervisors should be made aware that they have a responsibility to discipline employees in an appropriate and consistent manner.

It is vital to publish and disseminate the range of disciplinary standards for improper conduct and to educate officers and other hospice employees regarding these standards. The consequences of noncompliance should be consistently applied and enforced, in order for the disciplinary policy to have the required deterrent effect. All levels of employees should be potentially subject to the same types of disciplinary action for the commission of similar offenses. The commitment to compliance applies to all personnel levels within a hospice. The OIG believes that corporate officers, managers, supervisors, clinical staff, and other health care professionals should be held accountable for failing to comply with, or for the foreseeable failure of their subordinates to adhere to, the applicable standards, laws, and procedures.

[127] The OIG recognizes that hospices that are small in size and have limited resources may not be able to use internal reviewers who are not part of line management or hire outside reviewers.

[128] 42 CFR 418.66.

[129] *Id.*

2. New Employee Policy

For all new employees who have discretionary authority to make decisions that may involve compliance with the law or compliance oversight, hospices should conduct a reasonable and prudent background investigation, including a reference check,[130] as part of every such employment application. The application should specifically require the applicant to disclose any criminal conviction,[131] as defined by 42 U.S.C. 1320a–7(i), or exclusion action. Pursuant to the compliance program, hospice policies should prohibit the employment of individuals who have been recently convicted of a criminal offense related to health care [132] or who are listed as debarred, excluded, or otherwise ineligible for participation in Federal health care programs.[133] In addition, pending the resolution of any criminal charges or proposed debarment or exclusion, the OIG recommends that an individual who is the subject of such actions should be removed from direct responsibility for or involvement in any Federal health care program. That individual's salary should not be paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds.[134] With regard to current employees or independent contractors, if resolution of the matter results in conviction, debarment or exclusion, the hospice should terminate its employment or other contract arrangement with the individual or contractor.

[130] *See* note 99.

[131] States may mandate, and many hospices voluntarily conduct, criminal background checks for prospective employees of hospices. Identification of a criminal background of an applicant, who may have been recently convicted of serious crimes that relate to the proposed employment duties, could be grounds for denying employment. Further, criminal background screening may deter those individuals with criminal intent from entering the field of hospice.

[132] Because providers of hospice care have frequent, relatively unsupervised access to potentially vulnerable people and their property, a hospice should also strictly scrutinize whether it should employ individuals who have been convicted of crimes of neglect, violence, theft or dishonesty, or financial misconduct.

[133] Likewise, hospice compliance programs should establish standards prohibiting the execution of contracts with companies that have been recently convicted of a criminal offense related to health care or that are listed by a Federal agency as debarred, excluded or otherwise ineligible for participation in Federal health care programs. *See* note 99.

[134] Prospective employees who have been officially reinstated into the Medicare and Medicaid programs by the OIG may be considered for employment upon proof of such reinstatement.

G. Responding to Detected Offenses and Developing Corrective Action Initiatives

1. Violations and Investigations

Violations of a hospice's compliance program, failures to comply with applicable Federal or State law, and other types of misconduct threaten a hospice's status as a reliable, honest and trustworthy provider capable of participating in Federal health care programs. Detected but uncorrected misconduct can seriously endanger the mission, reputation and legal status of the hospice. Consequently, upon reports or reasonable indications of suspected noncompliance, it is important that the compliance officer or other management officials immediately investigate the conduct in question to determine whether a material violation of applicable law or the requirements of the compliance program has occurred, and if so, take decisive steps to correct the problem.[135] As appropriate, such steps may include an immediate referral to criminal and/or civil law enforcement authorities, a corrective action plan,[136] a report to the Government [137] and the return of any overpayments, if applicable.

Where potential fraud or False Claims Act liability is not involved, the OIG recommends that normal repayment channels should be used for returning overpayments to the Government as they are discovered. However, even if the overpayment detection and return process is working and is being monitored by the hospice's audit or billing divisions, the OIG still believes that the compliance officer needs to be made aware of these overpayments, violations or deviations that may reveal trends or patterns indicative of a systemic problem.

[135] Instances of noncompliance must be determined on a case-by-case basis. The existence, or amount, of a *monetary* loss to a health care program is not solely determinative of whether or not the conduct should be investigated and reported to governmental authorities. In fact, there may be instances where there is no readily identifiable monetary loss at all, but corrective action and reporting are still necessary to protect the integrity of the applicable program and its beneficiaries, e.g., where services required by a plan of care were not provided.

[136] Advice from the hospice's in-house counsel or an outside law firm may be sought to determine the extent of the hospice's liability and to plan the appropriate course of action.

[137] The OIG currently maintains a provider self-disclosure protocol that encourages providers to report suspected fraud. The concept of voluntary self-disclosure is premised on a recognition that the Government alone cannot protect the integrity of the Medicare and other Federal health care programs. Health care providers must be willing to police themselves, correct underlying problems and work with the Government to resolve these matters. The self-disclosure protocol can be located on the OIG's website at http://www.dhhs.gov/progorg/oig

Depending upon the nature of the alleged violations, an internal investigation will probably include interviews and a review of relevant documents. Some hospices should consider engaging outside counsel, auditors or health care experts to assist in an investigation. Records of the investigation should contain documentation of the alleged violation, a description of the investigative process (including the objectivity of the investigators and methodologies utilized), copies of interview notes and key documents, a log of the witnesses interviewed and the documents reviewed, the results of the investigation, *e.g.*, any disciplinary action taken, and the corrective action implemented. While any action taken as the result of an investigation will necessarily vary depending upon the hospice and the situation, hospices should strive for some consistency by utilizing sound practices and disciplinary protocols.[138] Further, after a reasonable period, the compliance officer should review the circumstances that formed the basis for the investigation to determine whether similar problems have been uncovered or modifications of the compliance program are necessary to prevent and detect other inappropriate conduct or violations.

If an investigation of an alleged violation is undertaken and the compliance officer believes the integrity of the investigation may be at stake because of the presence of employees under investigation, those subjects should be removed from their current work activity until the investigation is completed (unless an internal or Government-led undercover operation known to the hospice is in effect). In addition, the compliance officer should take appropriate steps to secure or prevent the destruction of documents or other evidence relevant to the investigation. If the hospice determines that disciplinary action is warranted, it should be prompt and imposed in accordance with the hospice's written standards of disciplinary action.

2. Reporting

If the compliance officer, compliance committee, or management official discovers credible evidence of misconduct from any source and, after a reasonable inquiry, has reason to

[138] The parameters of a claim review subject to an internal investigation will depend on the circumstances surrounding the issue(s) identified. By limiting the scope of an internal audit to current billing, a hospice may fail to discover major problems and deficiencies in operations, as well as be subject to certain liability.

believe that the misconduct may violate criminal, civil, or administrative law, then the hospice should promptly report the existence of misconduct to the appropriate Federal and State authorities [139] within a reasonable period, but not more than 60 days [140] after determining that there is credible evidence of a violation.[141] Prompt reporting will demonstrate the hospice's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, reporting such conduct will be considered a mitigating factor by the OIG in determining administrative sanctions (*e.g.*, penalties, assessments and exclusion), if the reporting provider becomes the target of an OIG investigation.[142]

When reporting misconduct to the Government, a hospice should provide all evidence relevant to the alleged violation of applicable Federal or State law(s) and potential cost impact. The compliance officer, under advice of counsel, and with guidance from the governmental authorities, could be requested to continue to investigate the reported violation. Once the investigation is completed, the compliance officer should be required to notify the appropriate governmental authority of the outcome of the investigation, including a description of the impact of the alleged violation on the operation of the applicable health care programs or their beneficiaries. If the investigation ultimately reveals that criminal, civil or administrative violations have occurred, the appropriate Federal and State authorities [143] should be notified immediately.

As previously stated, the hospice should take appropriate corrective action, including prompt identification of any overpayment to the affected payor and the imposition of proper disciplinary action. If potential fraud or violations of the False Claims Act are involved, any repayment of the overpayment should be made as part of the discussion with the Government following a report of the matter to law enforcement authorities. Otherwise, normal repayment channels should be used for repaying identified overpayments.[144] Failure to disclose overpayments within a reasonable period of time could be interpreted as an intentional attempt to conceal the overpayment from the Government, thereby establishing an independent basis for a criminal violation with respect to the hospice, as well as any individuals who may have been involved.[145] For this reason, hospice compliance programs should emphasize that overpayments obtained from Medicare or other Federal health care programs should be promptly disclosed and returned to the payor that made the erroneous payment.

The OIG believes all hospices, regardless of size, should ensure they are reporting the results of any overpayments or violations to the appropriate entity and taking the appropriate corrective action to remedy the identified deficiency.

III. Assessing the Effectiveness of a Compliance Program

Because the Government views the existence of a compliance program as a mitigating factor when determining culpability regarding allegations of fraud and abuse only if the compliance program is ''effective,'' how a hospice may assess its compliance program becomes quite significant. A hospice, as well as any other type of health care provider, should consider the attributes of each individual element of its compliance program to assess the program's ''effectiveness'' as a whole. Examining the comprehensiveness of policies and procedures implemented to satisfy these elements is merely the first step. Evaluating how a compliance program performs during a provider's day-to-day operations becomes the critical indicator.[146]

As previously stated, a compliance program should require the development and distribution of written compliance policies, standards and practices that identify specific areas of risk and vulnerability to a hospice. One way to judge whether these policies, standards and practices measure up is to observe how an organization's employees react to them. Do employees consistently experience recurring pitfalls because they lack guidance on certain issues not adequately covered in company policies? Are employees flagrantly disobeying an organization's standards of conduct because they observe no sincere buy-in from senior management? Do employees have trouble understanding policies and procedures because they are written in legalese or at difficult reading levels? Does an organization routinely experience systematic billing failures because employees are ill-instructed how to implement written policies and practices? Written compliance policies, standards and practices are only as good as an organization's commitment to apply them in practice.

Every hospice should designate a compliance officer or contact to serve as the focal point of compliance activities, and, if appropriate, a compliance committee to advise and assist the compliance officer. An organization needs to seriously consider whoever fills such integral roles and periodically monitor how the individuals chosen satisfy their responsibilities. Does a compliance officer have sufficient professional experience working with billing, clinical records, documentation, and auditing principles to perform assigned responsibilities fully? Has a compliance officer or compliance committee been negligent in ensuring an organization's compliance due to inadequate funding, staff, and authority necessary to carry out their jobs? Did

[139] Appropriate Federal and State authorities include the Office of Inspector General of the Department of Health and Human Services, the Criminal and Civil Divisions of the Department of Justice, the U.S. Attorney in relevant districts, the Federal Bureau of Investigation and the other investigative arms for the agencies administering the affected Federal or State health care programs, such as the State Medicaid Fraud Control Unit, the Defense Criminal Investigative Service, the Department of Veterans Affairs and the Office of Personnel Management (which administers the Federal Employee Health Benefits Program).

[140] In contrast, to qualify for the ''not less than double damages'' provision of the False Claims Act, the report must be provided to the Government within 30 days after the date when the hospice first obtained the information. 31 U.S.C. 3729(a).

[141] The OIG believes that some violations may be so serious that they warrant immediate notification to governmental authorities, prior to, or simultaneous with, commencing an internal investigation, *e.g.*, if the conduct: (1) is a clear violation of civil fraud or criminal law; (2) has a significant adverse effect on the quality of care provided to program beneficiaries (in addition to any other legal obligations regarding quality of care); or (3) indicates evidence of a systemic failure to comply with applicable laws or an existing corporate integrity agreement, regardless of the financial impact on Federal health care programs.

[142] The OIG has published criteria setting forth those factors that the OIG takes into consideration in determining whether it is appropriate to exclude a health care provider from program participation pursuant to 42 U.S.C. 1320a–7(b)(7) for violations of various fraud and abuse laws. *See* 62 FR 67392 (December 24, 1997).

[143] *See* note 139.

[144] A hospice should consult with its Medicare fiscal intermediary or HCFA for any further guidance regarding normal repayment channels. The hospice's Medicare fiscal intermediary or HCFA may require certain information (*e.g.*, alleged violation or issue causing overpayment, description of the internal investigative process with methodologies used to determine any overpayments, disciplinary actions taken and corrective actions taken, etc.) to be submitted with return of any overpayments, and that such repayment information be submitted to a specific department or individual. Interest will be assessed, when appropriate. *See* 42 CFR 405.376.

[145] *See* 42 U.S.C. 1320a–7b(a)(3).

[146] Evaluation may be accomplished through techniques such as employee surveys, management assessments and periodic review of benchmarks established for audits, investigations, disciplinary action, overpayments and employee feedback. All elements of an organization's compliance program can be evaluated, including policies, training, practices and compliance personnel.

adding the compliance officer function to a key management position with other significant duties compromise the goals of the compliance program (*e.g.*, chief financial officer who discounts certain overpayments identified to improve the company's bottom line profits)? Since a compliance officer and a compliance committee can potentially have a significant impact on how effectively a compliance program is implemented, those functions should not be taken for granted.

As evidenced throughout this guidance, the proper education and training of corporate officers, managers, health care professionals and other applicable employees of a provider, and the continual retraining of current personnel at all levels, are significant elements of an effective compliance program. Accordingly, such efforts should be routinely evaluated. Are employees trained frequently enough? Do employees fail post-training tests that evaluate knowledge of compliance? Do training sessions and materials adequately summarize important aspects of the organization's compliance program, such as fraud and abuse laws, Federal health care program requirements, and claim development and submission processes? Are training instructors qualified to present the subject matter and experienced enough to duly field questions? When thorough compliance training is periodically conducted, employees receive the reinforcement they need to ensure an effective compliance program.

An open line of communication between the compliance officer and a provider's employees is equally important to the success of a compliance program. In today's intensive regulatory environment, the OIG believes that a provider cannot possibly have an effective compliance program if it receives minimal or no feedback from its employees regarding compliance matters. For instance, if a compliance officer does not receive appropriate inquiries from employees: Do policies and procedures fail to adequately guide employees to whom and when they should be communicating compliance matters? Do employees fear retaliation if they report misconduct? Are employees reporting issues not related to compliance through the wrong channels? Do employees have bad-faith, ulterior motives for reporting? Regardless of the means that a provider employs, whether it be telephone hotline, email, or suggestion boxes, employees should seek clarification from compliance staff in the event of any confusion or question dealing with compliance policies, practices or procedures.

An effective compliance program should include guidance regarding disciplinary action for corporate officers, managers, health care professionals and other employees who have failed to adhere to an organization's standards of conduct, Federal health care program requirements or Federal or State laws. The number and caliber of disciplinary actions taken by an organization can be insightful. Have appropriate sanctions been applied to compliance misconduct? Are sanctions applied to all employees consistently, regardless of an employee's level in the corporate hierarchy? Have double-standards in discipline bred cynicism among employees? When disciplinary action is not taken seriously or applied haphazardly, such practices reflect poorly on senior management's commitment to foster compliance as well as the effectiveness of an organization's compliance program in general.

Another critical component of a successful compliance program is an ongoing monitoring and auditing process. The extent and frequency of the audit function may vary depending on factors such as the size and available resources, prior history of noncompliance, and risk factors of a particular hospice. The hallmark of effective monitoring and auditing efforts is how an organization determines the parameters of its reviews. Do audits focus on all pertinent departments of an organization? Does an audit cover compliance with all applicable laws and Federal health care program requirements? Are results of past audits, pre-established baselines or prior deficiencies reevaluated? Are the elements of the compliance program monitored? Are auditing techniques valid and conducted by objective reviewers? The extent and sincerity of an organization's efforts to confirm its compliance often proves to be a revealing determinant of a compliance program's effectiveness.

As was expressed in the last section of this guidance, it is essential that the compliance officer or other management officials immediately investigate reports or reasonable indications of suspected noncompliance. If a material violation of applicable law or compliance program requirements has occurred, a provider must take decisive steps to correct the problem. Providers who do not thoroughly investigate misconduct leave themselves open to undiscovered fraud, waste and abuse. When a provider learns of certain issues, does it knowingly disregard associated legal exposure? Is there a consistent and methodical approach to the correlation between compliance issues identified and the corrective action necessary to remedy? Are isolated overpayment matters properly resolved through normal repayment channels? Is credible evidence of misconduct that may violate criminal, civil or administrative law promptly reported to the appropriate Federal and State authorities? If any step in this process of responding to detected offenses is circumvented or improperly handled, such conduct would most likely demonstrate an ineffective compliance program, as well as potentially result in criminal, civil or administrative liability.

Documentation is the key to demonstrating the effectiveness of a provider's compliance program. For example, documentation of the following should be maintained: audit results; logs of hotline calls and their resolution; corrective actions plans; due diligence efforts regarding business transactions; records of employee training, including the number of training hours; disciplinary action; and modification and distribution of policies and procedures. Given that the OIG is encouraging self-disclosure of overpayments and billing irregularities, maintaining a record of disclosures and refunds to the health care programs is strongly endorsed. A documented practice of refunding of overpayments and self-disclosing incidents of non-compliance with Federal health care program requirements can serve as evidence of a meaningful compliance effort by a hospice.

Hospices, as well as all health care providers, should acknowledge that it is their responsibility to formulate policies, procedures, and practices that are tailored to their own operations, and that are comprehensive enough to ensure compliance with all applicable Federal health care program requirements. An organization is in the best position to validate the suitability of its compliance efforts based upon its own particular circumstances.

IV. Conclusion

Through this document, the OIG has attempted to provide a foundation to the process necessary to develop an effective and cost-efficient hospice compliance program. As previously stated, however, each program must be tailored to fit the needs and resources of an individual hospice, depending upon its particular corporate structure, mission and employee composition. The statutes, regulations and guidelines of the Federal and State health insurance

programs, as well as the policies and procedures of the private health plans, should be integrated into every hospice's compliance program.

The OIG recognizes that the health care industry in this country, which reaches millions of beneficiaries and expends about a trillion dollars annually, is constantly evolving. The time is right for hospices to implement a strong voluntary health care compliance program. As stated throughout this guidance, compliance is a dynamic process that helps to ensure that hospices and other health care providers are better able to fulfill their commitment to ethical behavior, as well as meet the changes and challenges being imposed upon them by Congress and private insurers. Ultimately, it is OIG's hope that a voluntarily created compliance program will enable hospices to meet their goals, improve the quality of patient care, and substantially reduce fraud, waste and abuse, as well as the cost of health care to Federal, State and private health insurers.

Dated: September 29, 1999.

June Gibbs Brown,

Inspector General.

[FR Doc. 99–25787 Filed 10–4–99; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development

Meeting of the National Reading Panel

Notice is hereby given of the Washington DC area meeting of the National Reading Panel. The meeting will be held on Wednesday, October 13, 1999, from 8 am to 6 pm and on Thursday, October 14, 1999 from 8 am to 6 pm. The meeting location is the Marriott Residence Inn, 7335 Wisconsin Avenue, Bethesda, Maryland, 20814. The entire meeting will be open to the public.

The National Reading Panel was requested by Congress and created by the Director of the National Institute of Child Health and Human Development in consultation with the Secretary of Education. The Panel will study the effectiveness of various approaches to teaching children how to read and report on the best ways to apply these findings in classrooms and at home. Its members include prominent reading researchers, teachers, child development experts, leaders in elementary and higher education, and parents. The Chair of the Panel is Dr. Donald N. Langenberg, Chancellor of the University System of Maryland.

The Panel will build on the findings presented by the National Research Council's Committee on the Prevention of Reading Difficulties in Young Children. Based on these findings and the National Reading Panel's own review of the literature, the Panel will: Determine the readiness for application in the classroom of the results of these research studies; identify appropriate means to rapidly disseminate this information to facilitate effective reading instruction in the schools; and identify gaps in the knowledge base for reading instruction and the best ways to close these gaps.

The agenda for this meeting will include presentations of subgroup reports and discussions of the reports by The National Reading Panel. A period of time will be set aside at approximately 3 pm on Thursday, October 14 for members of the public to address the Panel and express their views regarding the Panel's mission. Individuals desiring an opportunity to speak before the Panel should address their requests to F. William Dommel, Jr., J.D., Executive Director, National Reading Panel, c/o Mr. Patrick, Riccards and either mail them to the Widmeyer-Baker Group, 1825 Connecticut Avenue, NW, Fifth Floor, Washington, DC 20009, or e-mail them to patrickr@twbg.com, or fax them to 202–667–0902. Requests for addressing the Panel should be received by October 11, 1999. Panel business permitting, each public speaker will be allowed five minutes to present his or her views. In the event of a large number of public speakers, the Panel Chair retains the option to further limit the presentation time allowed to each. Although the time permitted for oral presentations will be brief, the full text of all written comments submitted to the Panel will be made available to the Panel members for consideration.

For further information contact Mr. Patrick Riccards at 202–667–0901. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Patrick Riccards by October 11, 1999.

Dated: September 28, 1999.

Yvonne Maddox,

Deputy Director, National Institute of Child Health and Human Development.

[FR Doc. 99–25757 Filed 10–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org/workpl.htm

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SPECIAL NOTE: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an

applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000, (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (Formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P. O. Box 88–6819, Great Lakes, IL, 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories, 14940–123 Ave., Edmonton, Alberta Canada T5V 1B4 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership 245, Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St. Madison, WI 53715 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

Info-Meth, 112 Crescent Ave., Peoria, IL 61636, 309–671–5199/800–752–1835, (Formerly: Methodist Medical Center Toxicology Laboratory)

Integrated Regional Laboratories, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784, (Formerly: Cedars Medical Center, Department of Pathology)

Kroll Laboratory Specialists, Inc. 1111 Newton St., Gretna, LA 70053 504–361–8989/800–433–3823 (Formerly: Laboratory Specialists, Inc.)

LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–233–6339, (Formerly: MedExpress/National Laboratory Center)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250

NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–268–2431 / 800–322–3361 (Formerly: NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc., University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197 (Formerly: UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110 (Formerly: Centinela Hospital Airport Toxicology Laboratory

Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400 / 800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200 / 800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–215–8800 (Formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372 / 800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600 / 800–882–7272

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (Formerly: SmithKline

Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120 / 800–444–0106 (Formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (Formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)

Quest Diagnostics Incorporated, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376 / 800–526–0947 (Formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (Formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory)

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600 / 800–877–7484 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–920–7733 / 800–574–2474 (Formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010 (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)

Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200 / 800–446–4728 (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)

Quest Diagnostics of Missouri LLC, 2320 Schuetz Rd., St. Louis, MO 63146, 314–991–1311 / 800–288–7293 (Formerly: Quest Diagnostics Incorporated, Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)

Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (Formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520 (Formerly: SmithKline Beecham Clinical Laboratories)

Quest Diagnostics LLC (IL), 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (Formerly: Quest Diagnostics Incorporated, MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)

San Diego Reference Laboratory, 6122 Nancy Ridge Dr., San Diego, CA 92121, 800–677–7995

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 254–771–8379 / 800–749–3788

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300 / 800–999–5227

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300 / 800–492–0800, (Formerly: MetWest-BPL Toxicology Laboratory)

Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851 / 888–953–8851

The following laboratory voluntarily withdrew from the NLCP program on October 1, 1999: Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–25778 Filed 10–4–99; 8:45 am]

BILLING CODE 4160–20–U

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 FR, 29908–29931, 9 June 1994). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[WO–640–1820–00 IA]

Alaska Resource Advisory Council (State of Alaska), et al.; Renewal

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Alaska Resource Advisory Council (State of Alaska); Arizona Resource Advisory Council (State of Arizona); Central California Resource Advisory Council, Northeastern California Resource Advisory Council, and Northwestern California Resource Advisory Council (State of California); Lower Snake Resource Advisory Council, Upper Snake Resource Advisory Council, and Upper Columbia-Salmon Clearwater Resource Advisory Council (State of Idaho); Western Montana (formerly Butte) Resource Advisory Council, Dakotas Resource Advisory Council (States of North Dakota and South Dakota), Central Montana (formerly Lewistown) Resource Advisory Council, and Eastern Montana (formerly Miles City) Resource Advisory Council (State of Montana); Northeastern Great Basin Resource Advisory Council, Mojave-Southern Great Basin Resource Advisory Council, and Sierra Front-Northwestern Great

Basin Resource Advisory Council (State of Nevada); New Mexico Resource Advisory Council (State of New Mexico); Eastern Washington Resource Advisory Council, John-Day Snake Resource Advisory Council (States of Oregon, Washington, and Idaho), and Southeast Oregon Resource Advisory Council (State of Oregon); and Utah Resource Advisory Council (State of Utah)—Notice of Renewal.

SUMMARY: This notice announces the renewal of the Bureau of Land Management's Alaska Resource Advisory Council (State of Alaska); Arizona Resource Advisory Council (State of Arizona); Central California Resource Advisory Council, Northeastern California Resource Advisory Council, and Northwestern California Resource Advisory Council (State of California); Lower Snake Resource Advisory Council, Upper Snake Resource Advisory Council, and Upper Columbia-Salmon Clearwater Resource Advisory Council (State of Idaho); Western Montana (formerly Butte) Resource Advisory Council, Dakotas Resource Advisory Council (States of North Dakota and South Dakota), Central Montana (formerly Lewistown) Resource Advisory Council, and Eastern Montana (formerly Miles City) Resource Advisory Council (State of Montana); Northeastern Great Basin Resource Advisory Council, Mojave-Southern Great Basin Resource Advisory Council, and Sierra Front-Northwestern Great Basin Resource Advisory Council (State of Nevada); New Mexico Resource Advisory Council (State of New Mexico); Eastern Washington Resource Advisory Council, John-Day Snake Resource Advisory Council (States of Oregon, Washington, and Idaho), and Southeast Oregon Resource Advisory Council (State of Oregon); and Utah Resource Advisory Council (State of Utah) by the Secretary of the Interior (Secretary) in accordance with the provisions of the Federal Advisory Committee Act (FACA) of 1972, 5 U.S.C. Appendix. The Secretary has determined the Councils are necessary and in the public interest. Copies of the Council charters will be filed with the appropriate committees of Congress and the Library of Congress in accordance with Section 9(c) of FACA.

The Federal Land Policy and Management Act, as amended, requires the Secretary to establish advisory councils to provide advice concerning the problems relating to land use planning and the management of public lands within the area for which the advisory councils are established. The Councils will provide representative counsel and advice to BLM on the planning and management of public lands as well as advice on public land resource issues. Council members will be residents of the State(s) in which the Councils have jurisdiction and will be appointed by the Secretary.

The purpose of the Councils is to advise the Secretary, through the BLM, on a variety of planning and management issues associated with the management of the public lands. The Council responsibilities include providing advice to BLM regarding the preparation, amendment, and implementation of land use plans; providing advice on long-range planning and establishing resource management priorities; and assisting the BLM in identifying State or regional standards for ecological health and guidelines for grazing.

Council members are representative of various industries and interests concerned with the management, protection, and utilization of the public lands. These include (a) holders of Federal grazing permits and representatives of energy and mining development, the timber industry, rights-of-way interests, off-road vehicle use, and commercial recreation; (b) representatives of nationally or regionally recognized environmental organizations, archaeological and historic interests, dispersed recreation, and wild horse and burro groups; and (c) representatives of State, county, and local government, employees of a State agency responsible for management of natural resources, Native American tribes, academia involved with natural sciences, and the public-at-large.

Membership will include individuals who have expertise, education, training, or practical experience in the planning and management of the public lands and their resources and who have a knowledge of the geographical jurisdiction(s) of the Councils.

FOR FURTHER INFORMATION CONTACT: Melanie Wilson, Intergovernmental Affairs (640), Bureau of Land Management, 1620 L Street, NW, Room 406 LS, Washington, DC 20240, telephone (202) 452–0377.

Certification Statement

I hereby certify the renewal of the Alaska Resource Advisory Council (State of Alaska); Arizona Resource Advisory Council (State of Arizona); Central California Resource Advisory Council, Northeastern California Resource Advisory Council, and Northwestern California Resource Advisory Council (State of California); Lower Snake Resource Advisory Council, Upper Snake Resource Advisory Council, and Upper Columbia-Salmon Clearwater Resource Advisory Council (State of Idaho); Western Montana (formerly Butte) Resource Advisory Council, Dakotas Resource Advisory Council (States of North Dakota and South Dakota), Central Montana (formerly Lewistown) Resource Advisory Council, and Eastern Montana (formerly Miles City) Resource Advisory Council (State of Montana); Northeastern Great Basin Resource Advisory Council, Mojave-Southern Great Basin Resource Advisory Council, and Sierra Front-Northwestern Great Basin Resource Advisory Council (State of Nevada); New Mexico Resource Advisory Council (State of New Mexico); Eastern Washington Resource Advisory Council, John-Day Snake Resource Advisory Council (States of Oregon, Washington, and Idaho), and Southeast Oregon Resource Advisory Council (State of Oregon); and Utah Resource Advisory Council (State of Utah) are necessary and in the public interest in connection with the Secretary's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Dated: September 20, 1999.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 99–25826 Filed 10–4–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Environmental Assessment and Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for Construction of an Office Park and Business Center, Castle Rock, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: Robert L. Heir and H.R. Gannon have applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The applicant has been assigned permit number TE–017353. The permit would authorize the incidental take of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*), federally listed as threatened, and loss and modification of its habitat associated with construction and use of Brookside Office Park and Brookside Business Center. The permit would

cover disturbances to areas at the Office Park and Business Center subsequent to May 13, 1998, the date of the listing of the Preble's mouse as a threatened species, including disturbances that occur prior to the date of issuance of the Proposed Permit, and it would be in effect for 11 years from the date of issuance.

We announce the receipt of the applicants' incidental take permit application that includes a combined proposed Habitat Conservation Plan (HCP) and Environmental Assessment (EA) for the Preble's meadow jumping mouse for the Brookside Office Park and Brookside Busines Center. The proposed HCP/EA is available for public comment. It fully describes the proposed project and the measures the applicants would undertake to minimize and mitigate project impacts to the Preble's meadow jumping mouse.

DATES: Written comments on the permit application, Habitat Conservation Plan, and Environmental Assessment should be received on or before November 4, 1999.

ADDRESSES: Comments regarding the permit application and HCP/EA should be addressed to LeRoy, Carlson, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the HCP/EA and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the Lakewood, Colorado field office (see **ADDRESSES** above).

Background

Section 9 of the Act and Federal regulation prohibit the ''take'' of a species listed as endangered or threatened. Take is defined under the Act, in part, as to kill, harm, or harass a federally listed species. However, the Service may issue permits to authorize ''incidental take'' of listed species under limited circumstances. Incidental Take is defined under the Act as take of a listed species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

The Brookside Office Park and Brookside Business Center are located in portions of Sections 11, 14, 15, and 23 of Township 8 South, Range 67 West, Town of Castle Rock, Douglas County, State of Colorado. The projects will disturb a total of 7.28 acres of ground undisturbed as of the Listing Date that may result in incidental take. Completion of the Office Park project will impact 1.15 acres. The remaining 6.13 acres, yet to be disturbed, will be at the Business Center site. Both sites will impact upland areas only.

Alternatives considered in addition to the Proposed Action, were an alternate site location, alternate site design, and no action. None of these alternatives eliminated potential take of Preble's. The onsite, offsite, and cumulative impacts of the Projects and all associated development and construction activities and mitigation activities proposed by the HCP will have no significant impact on the Preble's mouse, other threatened or endangered species, vegetation, wildlife, wetlands, geology/soils, land use, water resources, air and water quality, or cultural resources. The Projects will only disturb upland areas which are less biologically productive and include less significant potential Preble's mouse habitat than the riparian and ecotone areas undisturbed by the projects and the focus of the mitigation activities. The mitigation will likely provide a net benefit to the Preble's mouse and other wildlife by benefitting the more productive riparian and ecotone areas, which have more potential as habitat, more than the negative impacts of the disturbance of the upland areas on potential habitat areas.

Only one federally listed species, the threatened Preble's meadow jumping mouse, occurs on site and has the potential to be adversely affected by the project. To mitigate impacts that may result from incidental take, the HCP provides that mitigation for the Office Park will be 0.69 acres of restoration and 5.19 acres of enhancement. Mitigation for the Business Center will be 18.39 acres of enhancement. All of the proposed mitigation area is within the boundaries of the Property, all of which is included in the drainage basin of East Plum Creek. The mitigation will focus on planting of willows and grasses in five units on the property. Russian knapweed, a noxious weed, would be removed as part of the plan.

Success of mitigation efforts will be defined as 70 percent survival and establishment of plantings, and it will be monitored annually in the summer by the Applicants for the first 5-year period and every 2 years for the following 6 years, or until success is achieved if longer than 6 years. Success will be measured by the use of photo points analysis in each mitigation unit. The Applicants will be responsible for replanting if success is not achieved by the end of the first 5-year period. The Applicants are committed to provide the necessary funding to support the mitigation. The Applicants will place the necessary funds into an escrow or similar type account that will limit use of the funds for mitigation activities.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the Plan, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of the Preble's meadow jumping mouse in conjunction with the construction and use of the Brookside Office Park and Brookside Business Center. The final permit decision will be made no sooner than November 4, 1999.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: September 22, 1999.

Terry Terrell,

Deputy Regional Director, Fish and Wildlife Service, Denver, Colorado.

[FR Doc. 99–25534 Filed 10–4–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–040–930–1210–00]

Notice of Closure of Public Lands; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of a temporary closure to off highway vehicle use in the Spring Creek Canyon Wilderness Study Area.

SUMMARY: This notice closes to off highway vehicle (OHV) use approximately 4400 acres of the Spring Creek Canyon Wilderness Study Area (WSA). An area within the WSA that will remain open to vehicle use is the existing way into Kanarra Creek. Signing and a physical barrier in Spring Creek Canyon will be used as necessary to facilitate this action. The authority for this action is 43 CFR 8341.2.

DATES: This closure will begin immediately and remain in effect

indefinitely or until action is taken to complete a permanent closure.

ADDRESSES: Copies of maps are available at the Bureau of Land Management (BLM), Cedar City Field Office, 176 East DL Sargent Drive, Cedar City, Utah 84720 and BLM Utah State Office, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Craig Egerton, Cedar City Field Office, at (435) 586–2401.

SUPPLEMENTARY INFORMATION: The 4433 acre Spring Creek Canyon WSA was established in 1980.

The WSA is currently designated as open to OHV use as documented in the Off Road Vehicle Designation and Implementation Plan (OHV Plan) for Beaver River Resource Area completed in 1987. The OHV plan also prescribes that BLM monitor ongoing (OHV) activity and, if necessary, adjust the time, location, or quantity of use. The Interim Management Policy for WSA's restricts vehicle travel to existing ways present at the time of WSA designation to prevent impairment of areas with wilderness characteristics. The Spring Creek Canyon WSA has received considerable increase in OHV use, extending of OHV routes, and impairment of wilderness character since designation of this WSA. Further, a recent action of bulldozing in Spring Creek Canyon has occurred which has caused further impairment. Therefore, BLM is temporarily closing to OHV use the area as described above.

Dated: September 23, 1999.

Craig Egerton,

Acting District Manager.

[FR Doc. 99–25483 Filed 10–4–99; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Announcement of Posting of Invitation for Exchange of Natural Gas From Federal Properties in the Gulf of Mexico

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of invitation for exchange of Federal royalty gas.

SUMMARY: The Minerals Management Service will post on MMS's Internet Home Page, and make available in hard copy, a public competitive offering of approximately 260 million cubic feet per day of natural gas, to be taken as royalty-in-kind from Federal properties in the Gulf of Mexico Region (GOMR) under an Invitation For Exchange (IFE), Number MMS–RIK–2000–GOMR–001.

DATES: The IFE will be posted on MMS's Internet Home Page on or about October 8, 1999. Bids will be due to MMS, at the posted receipt location, on or about October 22, 1999. MMS will notify successful bidders on or about October 29, 1999. The Federal Government will begin actual taking of awarded royalty gas volumes for delivery to successful bidders for a 4-month period beginning on December 1, 1999. A preliminary list of properties from which MMS is considering taking royalty gas was posted September 27, 1999, on MMS's Internet Home Page.

ADDRESSES: The IFE will be posted on MMS's Home Page at http://www.mms.gov under the icon ''What's New.'' The IFE may also be obtained by contacting Mr. Michael Del-Colle at the address in the **FURTHER INFORMATION** section. Bids should be submitted to the address provided in the IFE.

FOR FURTHER INFORMATION CONTACT: For additional information on MMS's RIK pilots, contact.Mr. Bonn J. Macy, Minerals Management Service, 1849 C Street, N.W., MS–4230, Washington D.C. 20240; telephone number (202) 208–3827; fax (202) 208–3918; e-mail Bonn.Macy@mms.gov. For additional information concerning the IFE document, terms, and process for Federal leases, contact Mr. Michael Del-Colle, Minerals Management Service, MS–2510, 381 Elden Street, Herndon, VA 20170–4817; telephone number (703) 787–1375; fax (703) 787–1009; e-mail Michael.Del-Colle@mms.gov.

SUPPLEMENTARY INFORMATION: This offering of natural gas in the IFE begins the third of MMS's three planned RIK pilots and will involve Federal properties in the Gulf of Mexico Region (GOMR). The first Pilot involved crude oil from Federal and State of Wyoming properties in Wyoming and the second was limited to Federal properties in the 8(g) zone of the GOMR, offshore of Texas. MMS's objective in this third pilot, as in all its pilots, is to identify the circumstances in which taking oil and gas royalties as a share of production (RIK) is a viable alternative to its usual practice of collecting oil and gas royalties as a share of the value received by the lessee for sale of the production. This third pilot is expected to last 2 to 3 years.

This IFE will offer approximately 260 million cubic feet per day of natural gas from about 146 Federal properties located in the High Island, East and West Cameron, and Sabine Pass areas of the GOMR. The royalty gas flows through about 75 facility measurement points (FMP's) on five pipeline systems.

Purchasers may bid on production from individual properties and/or on groups of properties. Under the terms of the offer, successful bidders would take the royalty gas from specified properties and locations near the lease and, in return, deliver natural gas in equivalent amounts and qualities to a specified location. Bids will be due as specified in the IFE on October 22, 1999; successful bidders will be notified on or about October 29, 1999.

The following are some of the additional details regarding the offering that will be posted in the IFE on or about October 8, 1999.

- List of specific properties;
- For each property—FMP location and identification number, average daily royalty volume, quality, current operator; and other pipeline information.
- Bid basis;
- Reporting requirements;
- Terms and conditions; and
- Contract format.

Information on the internet posting and availability of the IFE in hard copy are being made available to oil and gas trade journals as well as in this **Federal Register** notice.

Dated: September 29, 1999.

Walter D. Cruickshank,

Associate Director for Policy and Management Improvement.

[FR Doc. 99–25830 Filed 10–4–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Application to Preserve Residence for Naturalization.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 17, 1999 at 64 FR 44748, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public

comments. Comments are encouraged and will be accepted until November 4, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application to Preserve residence for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–470. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Individuals or Households. The information will be used to determine whether an alien who intends to be absent from United States for a period of one year or more is eligible to preserve residence for naturalization purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 300 responses at 15 minutes (.25) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 75 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: September 29, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–25762 Filed 10–4–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2025–99]

Announcement of a Meeting on the Status of the Evaluation of the Employment Verification Pilots

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

SUMMARY: On September 15, 1997, the Immigration and Naturalization Service (Service) published a notice in the **Federal Register** describing pilot programs that are required by section 403 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The pilots include: (1) The Basic Pilot—requiring participating employers to verify employment authorization for all new employees, regardless of citizenship; (2) the Citizen Attestation Pilot; and (3) the Machine-Readable Document Pilot. The purpose of this notice is to announce to interested members of the public a meeting on the current status of the evaluation of the Pilots and to solicit comments and suggestions on the proposed methodology for the Basic Pilot.

DATE AND TIME: The meeting will be held on Tuesday, October 19, 1999, from 10 a.m.–12 p.m..

ADDRESSES: The meeting will be held at the Immigration and Naturalization Service Headquarters, 425 I Street NW., Washington, DC 20536, Shaughnessy Room, 6th floor Conference Room.

FOR FURTHER INFORMATION CONTACT: *Service contact:* Sally Goya, Office of Policy and Planning, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 616–0543. *Research contact:* Dr. Carolyn F. Shettle, Temple University/ Institute for Survey Research, 4646 40th Street NW., Washington, DC 20016. Telephone: (202) 537–6700 Fax: (202) 537–6873. *E–mail:* cschettle@erols.com.

SUPPLEMENTARY INFORMATION: The Basic Pilot was established by the Service in response to section 403 of the IIRIRA. The Basic Pilot is a free employment eligibility confirmation system operated by this Service and the Social Security Administration to test a method of providing effective, nondiscriminatory employment eligibility verification. The Basic Pilot will allow participating employers to confirm the employment eligibility of their newly hired employees and help maintain a stable, legal workforce. The evaluation, which was also mandated by the IIRIRA, is being conducted by two independent contractors, Temple University's Institute for Survey Research and the Westat Corporation.

Summary of Agenda

- Introductions
- Overview of the Basic Pilot Program
- Overview of the evaluation goals
- Presentation of the proposed methodological approach for collecting data on the Basic Pilot Program
- Presentation of analysis
- Questions and comments

Public Participation

The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify Dr. Shettle at least 5 days prior to the meeting. Members of the public may pose questions or make comments during the meeting; however, written questions submitted in advance would be appreciated.

Dated: September 29, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–25763 Filed 10–4–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 29, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ({202} 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be send to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer For BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7315), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proopsed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: OFCCP Recordkeeping and Reporting Requirements.

OMB Number: 1215–0072.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Not for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 89,807.

Estimated Time Per respondent:

Recordkeeping—Initial Development of AAP: 179.46.

Recordkeeping—Annual Update of AAP: 74,889.

Recordkeeping—Maintenance of AAP: 74,889.

Recordkeeping—Uniform Guidelines on Employee Selection Procedures: 2.18.

Reporting—SF 100: 3.7.

Reporting—Scheduling Letter: 4.5.

Reporting—Compliance Check Letter: .4.

Total Burden Hours: 13,701,349.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Recordkeeping and reporting obligations incurred by Federal contractors under E.O. 11246, Section 503 of the Rehabilitation Act of 1973, and affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act, 38 U.S.C. 4212, are necessary to substantiate compliance with nondiscrimination and affirmative action requirement enforced by OFCCP.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 99–25812 Filed 10–4–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed new information collection of The Office of Federal Contract Compliance Programs' Equal Opportunity Survey. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section on or before December 6, 1999.

ADDRESSEE: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

I. Background

Government contractors provide information on their personnel activities and the results of their affirmative efforts to employ and promote minorities and women. This information is used to select specifically identified contractors for compliance evaluations and technical assistance. This requirement has been established under Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 USC 4212, and OFCCP's implementing regulations at 41 CFR (Code of Federal Regulations) Chapter 60.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor is developing an Equal Opportunity Survey in order to improve its implementation of the laws enforced by OFCCP: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212. The three-part survey, as currently envisioned, would collect general information on the status of the federal contractor's affirmative action plan and aggregated personnel and compensation data, with a breakdown by gender and minority status.

Each year, OFCCP will collect survey data from federal contractors who are subject to the laws enforced by the agency. DOL's goals for the survey are: to increase compliance with equal employment opportunity requirements by improving contractor self-awareness; to improve the deployment of scarce federal government resources toward contractors more likely than not to be in noncompliance; and to increase agency efficiency by building on the tiered-review process already accomplished by OFCCP's regulatory reform efforts, thereby allowing better resource allocation.

In consultation with the Office of Management and Budget (OMB), DOL has developed a plan for phasing in the implementation of the Equal Opportunity Survey. As part of the developmental process, the instrument first is being tested using procedures established by the Bureau of Labor Statistics to assure that it is structured in a manner that respondents understand and that the data OFCCP is seeking are readily available.

Once the survey development process has been completed, the survey will be phased in using two mailings in FY 2000. The phase-in process will allow updating of the flagged contractor list with the new EEO–1 data expected in the summer of 2000. It will also permit modifications to be made to data processing procedures to assure timely processing.

Phase I—Survey Instrument Development

During this phase the survey instrument will be put in final form and tested for clarity; the analytical model will be developed; and, initial consultation with an outside contractor on survey processing procedures will take place.

The draft survey instrument has been tested and evaluated using the facilities of the Bureau of Labor Statistics Behavioral Science Research Center. This assures that the definitions and instructions are clearly written and can be readily understood. Suggestions for improving the clarity of the form have been incorporated into the current version. This part of the process began in August 1999 and was completed in September 1999.

Between October 1999 and January 2000 the Department will field test the survey instrument. This field test, conducted on a voluntary basis, will be designed to test the procedures used when the survey is implemented and will include a follow-up component for both respondents and nonrespondents. The field test will be conducted by OFCCP with the assistance of BLS. Following the field test, appropriate revisions will be made to the survey instrument. The final report of the results of the field test and the survey in final form will be included with the final ICR submission to OMB in January 2000.

Phase II—Survey

At this time OFCCP intends to send the survey to contractor establishments that are ''flagged'' by OFCCP's Equal Employment Data System (EEDS) as being potentially out of compliance with Executive Order 11246. An initial mailing of the survey will be made to respondents selected from those establishments that were flagged in 1999. Approximately 7,000 of the flagged establishments will be surveyed in April 2000. This number was chosen to provide a sufficient sample to test the data intake and processing procedures. Flagged establishments will be selected for the survey based on geographic location and size.

The survey data from the initial mailing will be processed and analyzed and the results used to identify establishments for compliance evaluations. The analytical model will result in a ranking of contractors based on the nature and number of adverse indicators. Compliance evaluations will be scheduled beginning with those establishments with the highest rankings on the indicator scale. As part of the compliance evaluation process, survey responses will be validated for a sample of establishments to assure that accurate data are being submitted. Establishments where compliance evaluations are not initiated may be notified of areas that require additional self-analysis.

The second mailing will be sent to the flagged establishments that were not previously surveyed in the first mailing (i.e., about 53,000 establishments). These surveys will be mailed in late FY 2000, and will be used to select establishments for compliance evaluations during FY 2001. Thereafter OFCCP intends to survey contractors on an annual basis.

Type of Review: New Collection.

Agency: Employment Standards Administration.

Title: Equal Opportunity Survey.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Total Respondents: 60,000.

Frequency: Annually.

Total Responses: 60,000.

Estimated Time Per Response: 12 hours.

Estimated Total Burden Hours: 720,000.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): $60,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 30, 1999.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 99–25811 Filed 10–4–99; 8:45 am]

BILLING CODE 4510–27–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on October 20, 1999. The meeting will take place at the address provided below. All sessions of the meeting will be open to the public. Topics of discussion will include: (1) the revision of the NRC's medical regulations, in preparation for the Committee's participation in the October 21, 1999, Commission briefing on 10 CFR Part 35 (64 FR 44965); and (2) the Committee's self-review, using the criteria previously developed to evaluate the performance of the Committee.

DATES: The meeting will be held from 2 to 5 p.m. on October 20, 1999.

ADDRESSES: U.S. Nuclear Regulatory Commission, Two White Flint North, 11545 Rockville Pike, Room T2B3, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Diane Flack, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Mail Stop T–9–F31, Washington DC 20555, Telephone (301) 415–5681.

Conduct of the Meeting

Manuel D. Cerqueira, M.D., will chair the meeting. Dr. Cerqueira will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Diane Flack (address listed previously), by October 12, 1999. Statements must pertain to the topics on the agenda for the meeting.

2. At the meeting, questions from members of the public will be permitted at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street, NW, Lower Level, Washington DC 20555, telephone (202) 634–3273, on or about November 22, 1999. Minutes of the meeting will be available on or about December 20, 1999.

4. Seating for the public will be on a first-come, first-served basis.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, U.S. Code of Federal Regulations, Part 7.

Dated: September 29, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–25796 Filed 10–4–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (HyperFeed Technologies, Inc., Common Stock, $.001 Par Value) File No. 1–11108

September 29, 1999.

HyperFeed Technologies, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the security specified above (''Security'') from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Security has been listed for trading on the Amex and, pursuant to a Registration Statement filed with the Commission on Form 8–A, became designated for quotation on the Nasdaq Stock Market, Inc. (''Nasdaq'') on September 17, 1999. Trading in the shares of the Security on the Nasdaq commenced at the opening of business on September 23, 1999.

In making the determination to transfer the trading of shares of its Security from the Amex to the Nasdaq, the Company, whose primary business relates to technology, has stated its belief that there exist greater potential benefits to its shareholders from trading on the Nasdaq.

The Company has complied with the rules of the Amex by filing with the Exchange a certified copy of the preambles and resolutions adopted by its Board of Directors authorizing the withdrawal of the Security from listing on the Amex, and by setting forth in detail to the Exchange the reasons and supporting facts for such proposed withdrawal. The Amex has in turn informed the Company that it would not interpose any objection to the Company's application to withdraw its Security from listing and registration on the Exchange.

The Company's application relates solely to withdrawal of its Security from listing and registration on the Exchange and shall not affect the Security's designation for quotation on the Nasdaq. By reason of Section 12(g) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission.

Any interested person may, on or before October 20, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above,unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–25828 Filed 10–4–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Investment Company Act Release No. 24060; 812–11740]

J.P. Morgan Securities Inc.; Notice of Application

September 29, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1) of the Act, under section 6(c) of the Act for an exception from section 14(a) of that Act, and under section 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: J.P. Morgan Securities Inc. (''J.P. Morgan'') requests an order with respect to the MEDS trusts (''MEDS Trusts'')[1] and future trusts that are substantially similar to the MEDS Trusts and for which J.P. Morgan will serve as a principal underwriter (collectively, the ''Trusts'') that would (i) permit other registered investment companies, and companies excepted from the definition of investment company under section 3(c)(1) or (c)(7) of the Act, to own a greater percentage of the total outstanding voting stock (the ''Securities'') of any Trust than that permitted by section 12(d)(1), (ii) exempt the Trusts from the initial net worth requirements of section 14(a), and (iii) permit the trusts to purchase U.S. government securities from J.P. Morgan at the time of a Trust's initial issuance of Securities.

FILING DATES: The application was filed on August 6, 1999. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing tot he SEC's Secretary and serving J.P. Morgan with a copy of the request, personally or by mail. Hearing request should be

[1] ''MEDS'' is an acronym for Mandatory Enhanced Dividend Securities.

received by the SEC by 5:30 p.m. on October 25, 1999, and should be accompanied by proof of service on J.P. Morgan, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 60 Wall Street, New York, New York 10260.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicant's Representation

1. Each Trust will be a limited-life, grantor trust registered under the Act as a non-diversified, closed-end management investment company. J.P. Morgan will serve as a principal underwriter (as defined in section 2(a)(29) of the Act) of the Securities issued to the public by each Trust.

2. Each Trust will, at the time of its issuance of Securities, (i) enter into one or more forward purchase contracts (the ''Contracts'') with a counterparty to purchase a formulaically-determined number of a specified equity security or securities (the ''Shares'') of one specified issuer,[2] and (ii) in some cases, purchase certain U.S. Treasury securities (''Treasuries''), which may include interest-only or principal-only securities maturing at or prior to the Trust's termination. The Trusts will purchase the Contracts from counterparties that are not affiliated with either the relevant Trust or J.P. Morgan. The investment objective of each Trust will be to provide to each holder of Securities (''Holder'') (i) current cash distributions from the proceeds of any Treasuries, and (ii) participation in, or limited exposure to, changes in the market value of the underlying Shares.

3. In all cases, the Shares will trade in the secondary market and the issuer of the Shares will be a reporting company under the Securities Exchange Act of 1934. The number of Shares, or the value of the Shares, that will be delivered to a Trust pursuant to the Contracts may be fixed (*e.g.*, one Share per Security issued) or may be determined pursuant to a formula, the product of which will vary with the price of the Shares. A formula generally will result in each Holder of Securities receiving fewer Shares as the market value of the Shares increases, and more Shares as their market value decreases.[3] At the termination of each Trust, each Holder will receive the number of Shares per Security, or the value of the Shares, as determined by the terms of the Contracts, that is equal to the Holder's pro rata interest in the Shares or amount received by the Trust under the Contracts.[4]

4. Securities issued by the Trusts will be listed on a national securities exchange or traded on the Nasdaq National Market System. Thus, the Securities will be ''national market system'' securities subject to public price quotation and trade reporting requirements. After the Securities are issued, the trading price of the Securities is expected to vary from time to time based primarily upon the price of the underlying Shares, interest rates, and other factors affecting conditions and prices in the debt and equity markets. J.P. Morgan currently intends, but will not be obligated, to make a market in the Securities of each Trust.

5. Each Trust will be internally managed by three trustees and will not have a separate investment adviser. The trustees will have limited or no power to vary the investments held by each Trust. A bank or banks qualified to serve as a trustee under the Trust Indenture Act of 1939, as amended, will act as custodian for each Trust's assets and as administrator, paying agent, registrar, and transfer agent with respect to the Securities of each Trust. Any such bank will have no other affiliation with, and will not be engaged in any other transaction with, any Trust. The day-to-day administration of each Trust will be carried out by J.P. Morgan or by the bank.

6. The Trusts will be structured so that the trustees are not authorized to sell the Contracts or Treasuries under any circumstances or only upon the occurrence of certain events under a Contract. The Trusts will hold the Contracts until maturity or any earlier acceleration, at which time they will be settled according to their terms. However, in the event of the bankruptcy or insolvency of any counterparty to a Contract with a Trust, or the occurrence of certain other events provided for in the Contract, the obligations of the counterparty under the Contract may be accelerated and the available proceeds of the Contract will be distributed to the Holders.

7. The trustees of each Trust will be selected initially by J.P. Morgan, together with any other initial Holders, or by the grantors of the Trust. The Holders of each Trust will have the right, upon the declaration in writing or vote of more than two-thirds of the outstanding Securities of the Trust, to remove a trustee. Holders will be entitled to a full vote for each Security hold on all matters to be voted on by Holders and will not be able to cumulate their votes in the election of trustees. The investment objectives and policies of each Trust may be changed only with the approval of a ''majority of the Trust's outstanding Securities''[5] or any greater number required by the Trustee's constituent documents. Unless Holders so request, it is not expected that the Trusts will hold any meetings of Holders, or that Holders will ever vote.

8. The Trusts will not be entitled to any rights with respect to the Shares until any Contracts requiring delivery of the Shares to the Trust are settled, at which time the Shares will be promptly distributed to Holders. The Holders, therefore, will not be entitled to any rights with respect to the Shares (including voting rights or the right to receive any dividends or other distributions) until receipt by them of the Shares at the time the Trust is liquidated.

9. Each Trust's organizational and ongoing expenses will not be borne by

[2] Initially, no Trust will hold Contracts relating to the Shares of more than one issuer. However, if certain events specified in the Contracts occur, such as the issuer of Shares spinning-off securities of another issuer to the holders of the Shares, the Trust may receive shares of more than one issuer at the termination of the Contracts.

[3] A formula is likely to limit the Holder's participation in any appreciation of the underlying Shares, and it may, in some cases, limit the Holder's exposure to any depreciation in the underlying Shares. It is anticipated that the Holders will receive a yield greater than the ordinary dividend yield on the Shares at the time of the issuance of the Securities, which is intended to compensate Holders for the limit on the Holders' participation in any appreciation of the underlying Shares. In some cases, there may be an upper limit on the value of the Shares that a Holder will ultimately receive.

[4] The contracts may provide for an option on the part of a counterparty to deliver Shares, cash, or a combination of Shares and cash to the Trust at the termination of each Trust.

[5] A ''majority of the Trust's outstanding Securities'' means the lesser of (i) 67% of the Securities represented at a meeting at which more than 50% of the outstanding Securities are represented, and (ii) more than 50% of the outstanding Securities.

the Holders, but rather, directly or indirectly, by J.P. Morgan, the counterparties, or another third party, as will be described in the prospectus for the relevant Trust. At the time of the original issuance of the Securities of any Trust, there will be paid to each of the administrator, the custodian, and the paying agent, and to each trustee, a one-time amount in respect of such agent's fee over its term. Any expenses of the Trust in excess of this anticipated amount will be paid as incurred by a party other than the Trust itself (which party may be J.P. Morgan).

10. J.P. Morgan asserts that the investment product offered by the Trusts serves a valid business purpose. The Trusts, unlike most registered investment companies, are not marketed to provide investors with either professional investment asset management or the benefits of investment in a diversified pool of assets. Rather, J.P. Morgan asserts that the Securities are intended to provide Holders with an investment having unique payment and risk characteristics, including an anticipated higher current yield than the ordinary dividend yield on the Shares at the time of the issuance of the Securities.

Applicant's Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A)(i) of the Act prohibits (i) any registered investment company from owning in the aggregate more than 3% of the total outstanding voting stock of any other investment company, and (ii) any investment company from owning in the aggregate more than 3% of the total outstanding voting stock of any registered investment company. A company that is excepted from the definition of investment company under section 3(c)(1) or (c)(7) of the Act is deemed to be an investment company for purposes of section 12(d)(1)(A)(i) of the Act under sections 3(c)(1) and (c)(7)(D) of the Act. Section 12(d)(1)(C) of the Act similarly prohibits any investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies from owning more than 10% of the total outstanding voting stock of any closed-end investment company.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1), if, and to the extent that, the exemption is consistent with the public interest and protection of investors.

3. J.P. Morgan states that, in order for the Trusts to be marketed most successfully, and to be treated at a price that most accurately reflects their value, it is necessary for the Securities of each Trust to be offered to large investment companies and investment company complexes. J.P. Morgan states that these investors seek to spread the fixed costs of analyzing specific investment opportunities by making sizable investments in those opportunities. Conversely, J.P. Morgan asserts that it may not be economically rational for the investors, or their advisers, to take the time to review an investment opportunity if the amount that the investors would ultimately be permitted to purchase is immaterial in light of the total asserts of the investment company or investment company complex. Therefore, J.P. Morgan argues that these investors should be able to acquire Securities in each Trust in excess of the limitations imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C). J.P. Morgan requests that the SEC issue an order under section 12(d)(1)(J) exempting the Trusts from the limitations.

4. J.P. Morgan states that section 12(d)(1) was designed to prevent one investment company from buying control of other investment companies and creating complicated pyramidal structures. J.P. Morgan also state that section 12(d)(1) was intended to address the laying of costs to investors.

5. J.P. Morgan asserts that the concerns about pyramiding and undue influence generally do not arise in the case of the Trusts because neither the trustees nor the Holders will have the power to vary the investments held by each Trust or to acquire or dispose of the assets of the Trusts. To the extent that Holders can change the composition of the board of trustees or the fundamental policies of each Trust by vote, J.P. Morgan argues that any concerns regarding undue influence will be eliminated by a provision in the charter documents of the Trust that will require any investment companies owning voting stock of any Trust in excess of the limits imposed by sections 12(d)(1)(i) and 12(d)(1)(C) to vote their Securities in proportion to the votes of all other Holders. J.R. Morgan also states that the concern about undue influence through a threat to redeem does not arise in the case of the Trusts because the Securities will not be redeemable.

6. Section 12(d)(1) also was designed to address the excessive costs and fees that may result from multiple layers of investment companies. J.P. Morgan states that these concerns do not arise in the case of the Trusts because of the limited ongoing fees and expenses incurred by the Trusts and because generally these fees and expenses will be borne, directly or indirectly, by J.P. Morgan or another third party, not by the Holders. In addition, the Holders will not, as a practical matter, bear the organizational expenses (including underwriting expenses) of the Trusts. J.P. Morgan asserts that the organizational expenses effectively will be borne by the counterparties in the form of a discount in the price paid to them for the Contracts, or will be borne directly by J.P. Morgan, the counterparties, or other third parties. Thus, a Holder will not pay duplicative charges to purchase securities in any Trust. Finally, there will be no duplication of advisory fees because the Trusts will be internally managed by their trustees.

b. Section 14(a)

1. Section 14(a) of the Act requires, in pertinent part, that an investment company have a net worth of at least $100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a–3 exempts from section 14(a) unit investment trusts (''UITs'') that meet certain conditions in recognition of the fact that, once the units are sold, a UIT requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a–3 provides that a UIT investing in eligible trust securities shall be exempt from the net worth requirement, provided that the trust holds at least $100,000 of eligible trust securities at the commencement of a public offering.

2. Section 6(c) of the Act provides that the SEC may exempt persons or transactions if, and to the extent that, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. J.P. Morgan requests an order under section 6(c) exempting the Trusts from the requirements of section 14(a). J.P. Morgan believes that the exemption is appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act. J.P. Morgan asserts that, while the Trusts are classified as management companies, they have the characteristics of UITs. Investors in the Trusts, like investors in a UIT, will not be purchasing interests

in a managed pool of securities, but rather in a fixed and disclosed portfolio that is held until maturity. J.P. Morgan believes therefore, that there is no need for an ongoing commitment on the part of the underwriter.

4. J.P. Morgan states that, in order to ensure that each Trust will become a going concern, the Securities of each Trust will be publicly offered in a firm commitment underwriting, registered under the Securities Act of 1933, resulting in net proceeds to each Trust of at least $10,000,000. Prior to the issuance and delivery of the Securities of each Trust to the underwriters, the underwriters will enter into an underwriting agreement pursuant to which they will agree to purchase the Securities subject to customary conditions to closing. The underwriters will not be entitled to purchase less than all of the Securities of each Trust. Accordingly, J.P. Morgan states that either the offering will not be completed at all or each Trust will have a net worth substantially in excess of $100,000 on the date of the issuance of the Securities. J.P. Morgan also does not anticipate that the net worth of the Trusts will fall below $100,000 before they are terminated.

C. Section 17(a)

1. Sections 17(a)(1) and (2) of the Act generally prohibit the principal underwriter, or any affiliated person of the principal underwriter, of a registered investment company from selling or purchasing any securities to or from that investment company. The result of these provisions is to preclude the Trusts from purchasing Treasuries from J.P. Morgan.

2. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act. J.P. Morgan requests an exemption from sections 1(a)(1) and (2) to permit the Trusts to purchase Treasuries from J.P. Morgan.

3. J.P. Morgan states that the policy rationale underlying section 17(a) is the concern that an affiliated person of an investment company, by virtue of this relationship, could cause the investment company to purchase securities of poor quality from the affiliated person or to overpay for securities. J.P. Morgan argues that it is unlikely that it would be able to exercise any adverse influence over the Trusts with respect to purchases of Treasuries because Treasuries do not vary in quality and are traded in one of the most liquid markets in the world. Treasuries are available through both primary and secondary dealers, making the Treasury market very competitive. In addition, market prices on Treasuries can be confirmed on a number of commercially available information screens. J.P. Morgan argues that because it is one of a limited number of primary dealers in Treasuries, it will be able to offer the Trusts prompt execution of their Treasury purchases at very competitive prices.

4. J.P. Morgan states that it is only seeking relief from section 17(a) with respect to the initial purchase of the Treasuries and not with respect to an ongoing course of business. Consequently, investors will know before they purchase a Trust's Securities the Treasuries that will be owned by the Trust and the amount of the cash payments that will be provided periodically by the Treasuries to the Trust and distributed to Holders. J.P. Morgan also asserts that whatever risk there is of overpricing the Treasuries will be borne by the counterparties and not by the Holders because the cost of the Treasuries will be calculated into the amount paid on the Contracts. J.P. Morgan argues that, for this reason, the counterparties will have a strong incentive to monitor the price paid for the Treasuries, because any overpayment could result in a reduction in the amount that they would be paid on the Contracts.

Applicant's Conditions

J.P. Morgan agrees that the order granting the requested relief will be subject to the following conditions:

1. Any investment company owning voting stock of any Trust in excess of the limits imposed by section 12(d)(1) of the Act will be required by the Trust's charter documents, or will undertake, to vote its Trust shares in proportion to the vote of all other Holders.

2. The trustees of each Trust, including a majority of the trustees who are not interested persons of the Trust, (i) will adopt procedures that are reasonably designed to provide that the conditions set forth below have been complied with; (ii) will make and approve such changes as are deemed necessary; and (iii) will determine that the transactions made pursuant to the order were effected in compliance with such procedures.

3. The Trusts (i) will maintain and preserve in an easily accessible place a written copy of the procedures (and any modifications to the procedures), and (ii) will maintain and preserve for the longer of (a) the life of the Trusts and (b) six years following the purchase of any Treasuries, the first two years in an easily accessible place, a written record of all Treasuries purchased, whether or not from J.P. Morgan, setting forth a description of the Treasuries purchased, the identity of the seller, the terms of the purchase, and the information or materials upon which the determinations described below were made.

4. The Treasuries to be purchased by each Trust will be sufficient to provide payments to Holders of Securities that are consistent with the investment objectives and policies of the Trust as recited in the Trust's registration statement and will be consistent with the interests of the Trust and the Holders of its Securities.

5. The terms of the transactions will be reasonable and fair to the Holders of the Securities issued by each Trust and will not involve overreaching of the Trust or the Holders of Securities of the Trust on the part of any person concerned.

6. The fee, spread, or other remuneration to be received by J.P. Morgan will be reasonable and fair compared to the fee, spread, or other remuneration received by dealers in connection with comparable transactions at such time, and will comply with section 17(e)(2)(C) of the Act.

7. Before any Treasuries are purchased by the Trust, the Trust must obtain such available market information as it deems necessary to determine that the price to be paid for, and the terms of, the transaction are at least as favorable as that available from other sources. This will include the Trust obtaining and documenting the competitive indications with respect to the specific proposed transaction from two other independent government securities dealers. Competitive quotation information must include price and settlement terms. These dealers must be those who, in the experience of the Trust's trustees, have demonstrated the consistent ability to provide professional execution of Treasury transactions at competitive market prices. They also must be those who are in a position to quote favorable prices.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–25827 Filed 10–4–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before November 4, 1999. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW, 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Pre-Disaster Mitigation Small Business Loan Application.

Form No: 5M.

Frequency: On Occasion.

Description of Respondents: Person's applying for SBA Disaster Loans.

Annual Responses: 2,500.

Annual Burden: 4,875.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–25750 Filed 10–4–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before November 4, 1999. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW, 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: License Application Statement of Personal History and Qualification of Management.

Form No's: 415, 415A.

Frequency: On Occasion.

Description of Respondents: Small Business Investment Companies.

Annual Responses: 90.

Annual Burden: 14,400.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–25751 Filed 10–4–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 6 percent for the October—December quarter of FY 2000.

Arnold S. Rosenthal,

Acting Deputy Associate Administrator for Financial Assistance.

[FR Doc. 99–25749 Filed 10–4–99; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Application for Wife's or Husband's Insurance Benefits—0960–0008. The Social Security Administration (SSA) uses the information collected on Form SSA–2–F6 to determine whether applicants (including those who are divorced) can be entitled to wife's or husband's insurance benefits. The respondents are applicants for wife or husband's benefits (including those who are divorced).

Number of Respondents: 700,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 175,000 hours.

2. Application for Supplemental Security Income—0960–0229. SSA uses the information collected on Form SSA–8000–BK to determine the respondent's eligibility for, and amount of, SSI benefits. The respondents are applicants for SSI Benefits.

Number of Respondents: 1,007,773.

Frequency of Response: 1.

Average Burden Per Response:

35 minutes for paper application (3 percent of responses)

25 minutes for automated collection of information (97% of responses)

Estimated Annual Burden: 424,944 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Workers' Compensation/Public Disability Benefit Questionnaire—0960–0247. Form SSA–546 is used by the Social Security Administration (SSA) whenever an applicant for Title II Disability Insurance (DI) benefits indicates he or she has filed for, or intends to file for, Workmen's Compensation/Public Disability Benefits (WC/PDB). The form consolidates all the information necessary to identify the WC/PDB applied for and/or received, determines whether offset is applicable under the statute and, when applicable, computes the offset. The respondents are applicants for DI benefits.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 25,000 hours.

2. Statement of Marital Relationship (by One of the Parties)—0960–0038. SSA uses the information collected on Form SSA–754 to determine whether the conditions for establishing a common-law marriage under State law are met. The respondents are applicants for spouse's benefits.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 15,000 hours.

3. Student Reporting Form—0960–0088. Form SSA–1383 is used by Social Security student beneficiaries to report events or changes that may affect continuing entitlement to these benefits. The respondents are Social Security student beneficiaries.

Number of Respondents: 75,000.

Frequency of Response: 1.

Average Burden Per Response: 6 minutes.

Estimated Annual Burden: 7,500 hours.

4. Reporting Changes that Affect Your Social Security Payment—0960–0073. SSA uses the information collected on form SSA–1425 to determine continuing entitlement to Social Security Benefits and to determine the proper benefit amount. The respondents are Social Security beneficiaries who need to report an event that could affect payments.

Number of Respondents: 70,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 5,833 hours.

5. Black Lung Student's Statement Regarding Resumption of School Attendance and Report of Black Lung Student Beneficiary at End of School Year (two forms)-0960–0314. The information collected on Forms SSA–2602 and SSA–2613 is used by SSA to determine whether or not an entitled student beneficiary will resume (or has resumed) full-time school attendance at an approved educational institution. If so, the student will be continuously entitled to benefits. The respondents are children of disabled or deceased coal miners and officials of schools they attend.

	SSA–2602	SSA–2613
Number of Respondents	50	100
Frequency of Response	1	1
Average Burden Per Response (minutes)	5	7½
Estimated Annual Burden (hours)	4	12

6. 0960–NEW. SSA has contracted with the Gallup Organization to conduct surveys to gather data on the public's level of knowledge about Social Security programs. The 1998 Public Understanding Measurement System survey (PUMS) indicated that 45 percent of the population have a lack of understanding of the major Social Security program areas. The 1999 and future Public Understanding Measurement System surveys (PUMS II) will enable SSA to build upon the 1998 PUMS quantitative baseline measure of public understanding. An annual survey will provide annual tracking data of public understanding of SSA programs against which the outcomes of SSA performance improvement efforts can be assessed. Quarterly targeted surveys in 16 SSA areas will test the effectiveness of several specific communications and public information outreach efforts.

PUMS II is essential to SSA's goal of strengthening public understanding about Social Security programs. The relevant Agency goal contained in SSA's strategic plan is that by the year 2005, 90 percent of all American adults will be knowledgeable about Social Security programs in five broad areas: basic program facts; the financial value of programs to individuals; the economic and social impact of SSA programs; how the programs are financed today; and financing issues. The respondents will be randomly selected adults residing in the United States.

	Annual surveys	Quarterly surveys
Number of Respondents	4,000	12,000
Frequency of Response	1	1
Average Burden Per Response	[1] 2	[1] 12
Estimated Annual Burden	[2] 800	[2] 2,400

[1] Minutes.
[2] Hours.

7. Voluntary Customer Surveys In Accordance with E.O. 12862 within the Social Security Administration—0960–0526. These voluntary customer surveys will be used to ascertain customer satisfaction with the Social Security Administration in terms of timeliness, appropriateness, access, and other measures of quality service. Surveys will involve individuals that are the direct or indirect beneficiaries of SSA services. The average burden per response for these activities is estimated to range from 5 minutes for a simple comment card to 2 hours for participation in a focus group.

FY 2000:

Number of Respondents: 1,530,854.

Frequency of Response: 1.

Estimated Annual Burden: 139,571 Hours.

FY 2001:

Number of Respondents: 1,527,260.

Frequency of Response: 1.

Estimated Annual Burden: 138,229.

FY 2002:

Number of Respondents: 1,529,990.

Frequency of Response: 1.

Estimated Annual Burden: 138,074.

(SSA Address) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

(OMB Address) Office of Management and Budget, OIRA, Attn: Lori Schack, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503

Dated: September 29, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–25794 Filed 10–4–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending September 24, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6256
Date Filed: September 23, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC2 EUR 0269 dated 17 September 1999 r1–r4
PTC2 EUR 0270 dated 17 September 1999 r5–r34
PTC2 EUR 0271 dated 17 September 1999 r35–r38
PTC2 EUR 0272 dated 17 September 1999 r39
Within Europe Resolutions r1–r39
Minutes—PTC2 EUR 0268 dated 17 September 1999
Tables—None
Intended effective dates: 15 October, 1 November 1999,
1 January, 15 January 2000

Dorothy W. Walker,
Federal Register Liaison.
[FR Doc. 99–25863 Filed 10–4–99; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending September 24, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–6246.
Date Filed: September 21, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 19, 1999.

Description: Application of Delta Air Lines, Inc. pursuant to 49 U.S.C. Sections 41102 and 41108, Part 201, and Subpart Q, applies for a new or amended Certificate of Public Convenience and Necessity (Open Entry Routes) authorizing Delta to provide scheduled foreign air transportation of persons, property and mail between a point or points in the United States, on the one hand, and a point or points in each of the countries as listed in Exhibit A, on the other hand. Delta further applies for route integration authority to permit it to combine services on these routes with all other routes that it is authorized to serve, consistent with standard route integration conditions.

Docket Number: OST–99–6210.
Date Filed: September 22, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 29, 1999.

Description: Application of United Air Lines, Inc. pursuant to the Department's Notice dated September 8, 1999, requests that it be allocated seven U.S.-Argentina combination service frequencies for daily nonstop service between Los Angeles, California and Buenos Aires, Argentina, effective September 1, 2000.

Docket Number: OST–99–6210.
Date Filed: September 22, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September, 29, 1999.

Description: Amendment of Continental Airlines, Inc. to its application for a Certificate of Public Convenience and Necessity and Frequency Allocation in Docket OST–99–6166, consolidated by the Department into this proceeding, to add a request for Houston-Buenos Aires authority and the seven weekly frequencies which become available June 1, 2001, so that Continental may offer daily Houston-Buenos Aires service as well as Newark-Buenos Aires service.

Docket Number: OST–99–6210.
Date Filed: September 22, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 29, 1999.

Description: Supplement No. 1 of Delta Air Lines, Inc. to its application for Atlanta-Buenos Aires certificate authority and allocation of seven U.S.-Argentina frequencies, consolidated by the Department into this proceeding. Delta seeks certificate authority and seven frequencies to operate Atlanta-Buenos Aires. Delta requests the award of the Year 1 frequencies. In the event that Delta receives a Year 1 award, Delta further requests backup authority for the Year 2 frequencies to operate daily JFK-Buenos Aires nonstop service in addition to Atlanta.

Docket Number: OST–99–6249.
Date Filed: September 22, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 20, 1999.

Description: Application of Atlantic Coast Jet, Inc. pursuant to 49 U.S.C. Section 41102, Part 201 and Subpart Q, applies for a certificate of public convenience and necessity to authorize it to engage in interstate and overseas scheduled air transportation of persons, property and mail between any point or points in the United States, its territories and possessions, or the District of Columbia, on the one hand, and any other point or points in the United States, its territories and possessions. Atlantic Coast Jet also seeks the right to hold itself out and trade as ''the Delta Connection.''

Docket Number: OST–99–6263.
Date Filed: September 24, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 22, 1999.

Description: Application of Allegiant Air, Inc. pursuant to 49 U.S.C. Section 41102, Parts 201 and 204 and Subpart Q, applies for a certificate of public convenience and necessity to authorize Allegiant to engage in scheduled interstate air transportation of persons, property and mail.

Dorothy W. Walker,
Federal Register Liaison.
[FR Doc. 99–25862 Filed 10–4–99; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

North American Free Trade Agreement's Land Transportation Standards Subcommittee and Transportation Consultative Group: Annual Plenary Session

AGENCY: Office of the Secretary, DOT.

ACTION: Notice: Docket OST–95–246.

SUMMARY: This notice amends the notice that appeared in the **Federal Register** dated September 10, 1999, Vol. 64, No. 175, on page 49269, titled ''North American Free Trade Agreement's Land Transportation Standards Subcommittee and Transportation Consultative Group: Annual Plenary Session.'' The text of the second paragraph under the heading ''Meetings and Deadlines'' is being amended to change the time of the listening session. The paragraph should read as follows:

MEETINGS AND DEADLINES: Also at the same Baltimore site, on October 25, 1999, from 1:30 p.m. to 4:30 p.m., a listening session will be held for representatives of the truck, bus, and rail industries, transportation labor unions, brokers and shippers, chemical manufacturers, insurance industry, public safety advocates, and others who have notified us of their interest to attend and have submitted copies of their presentations, in English and Spanish, to the address below by October 12, 1999. This is an opportunity for presenters to voice their concerns, provide technical information, and offer suggestions relevant to achieving greater standards compatibility and improving cross-border trade. While written statements may be of any length, oral presentations will be limited to 10 minutes per presenter. After October 12, statements may be submitted for the record, and requests to present oral comments at the listening session will be accommodated only on a time-available basis.

Dated: September 29, 1999.

Roger Dean,

Acting Director, Office of International Transportation and Trade.

[FR Doc. 99–25831 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket RSPA–98–4957; Notice 8]

Notice of Extension of Existing Information Collection

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Request for public comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995, this notice announces that the Research and Special Programs Administration (RSPA) is publishing this notice seeking public comments on a proposed renewal of an information collection for the Alcohol Misuse Prevention Program for Pipeline Operators. This information collection requires gas pipeline operators, hazardous liquid pipeline operators, and liquefied natural gas (LNG) operators to document their alcohol misuse prevention programs.

DATES: Comments on this notice must be received December 6, 1999.

ADDRESSES: Comments should identify the docket number of this notice, RSPA–98–4957, and be mailed to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street SW, Washington, DC 20590–0001. You should submit the original and one copy. If you wish to receive confirmation of receipt of your comments, you must include a stamped, self-addressed postcard. The Dockets facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. In addition, the public may also submit or review comments by accessing the Docket Management System's home page at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW Washington, D.C. 20590, (202) 366–6205 or by electronic mail at marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Alcohol Misuse Prevention Program.

OMB Number: 2137–0587.

Type of Request: Extension of an existing information collection.

Abstract: Alcohol misuse has been identified by the Federal government as a significant danger to safety in the United States, and it is reasonable to assume that the problem exists in the gas pipeline industry, hazardous liquid pipeline industry, and the liquefied natural gas (LNG) industry. The potential harmful effects of alcohol misuse on safe pipeline and LNG facility operations warrant the comprehensive alcohol misuse testing regulation imposed on the pipeline industry. The regulations at 49 CFR Part 199 require information collection for an alcohol misuse prevention plan and associated testing records.

Respondents: Gas pipelines, hazardous liquid pipelines, and liquefied natural gas (LNG) facility operators.

Estimate of Burden: 6 hours per operator.

Estimated Number of Responses per Respondent: 1.

Estimated Total Burden : 10,278 hours.

Estimated Number of Respondents: 1,713.

Copies of this information collection can be reviewed at the Dockets Facility, Plaza 401, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590 from 9:00 a.m. to 5:00 p.m. Monday through Friday except Federal holidays. They also can be viewed over the Internet at http://dms.dot.gov

Comments are invited on (a) the need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on September 30, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–25844 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–4470]

Pipeline Safety: Meetings of Pipeline Safety Advisory Committees

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of advisory committee meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1) notice is hereby given of the following meetings of the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). Both the TPSSC and the THLPSSC are statutorily mandated advisory committees that assist RSPA's Office of Pipeline Safety in its consideration of proposed safety regulations, risk assessments, and safety policies for hazardous liquid and natural gas pipelines. Each committee has an authorized membership of 15 persons, five each from government, industry, and the public. The committees meet in May and November of each year. Each Committee meeting, as well as a joint session of the two Committees, is held at the Department of Transportation, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590. The November 3–4, 1999, meetings will be held in room 8236.

ADDRESSES: Comments on these meetings should be sent to the Dockets

Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001. Alternatively, comments may be e-mailed to ops.comments@rspa.dot.gov. All comments must reference Docket No. RSPA–98–4470. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Peggy Thompson at (202) 366–1933.

FOR FURTHER INFORMATION CONTACT: Mary Jo Cooney, OPS, (202) 366-4774 or Richard Huriaux, OPS, (202) 366–4565, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: On November 3, 1999, at 9:00 a.m., the Technical Hazardous Liquid Pipeline Safety Standards Committee will meet in room 8236 of the Nassif Building. The preliminary agenda includes:

1. Bellingham, WA Incident & Investigation
2. Industry Performance Report
3. Corrosion Control on Hazardous Liquid Pipelines
4. Pressure Testing Older Pipelines in Terminals
5. Update on Unusually Sensitive Areas (USA) Project
6. Oil Pollution Act Developments

On November 3, 1999, at 1:00 p.m., the THLPSSC will be joined by members of the TPSSC for a joint session of the gas and hazardous liquid pipeline advisory committees. The preliminary agenda includes:

1. Administration/RSPA/OPS Initiatives
2. Program Update
3. OPS Reauthorization: Congressional Perspectives
4. Challenges of the Current Regulatory Climate, Government Accounting Office & Inspector General Audits
5. Issues Raised by Recent Incidents & NTSB Perspectives
6. Opportunities for Improving Integrity Assurance
7. Underwater Abandoned Pipeline Facilities (VOTE)
8. Enforcement Procedures (VOTE)

On November 4, 1999, from 9:00 a.m. to 11:30 a.m., the Technical Pipeline Safety Standards Committee will meet. The preliminary agenda includes:

1. Plastic Pipeline Safety Standards & Research
2. Gas Pipeline Safety Standards; SIRRC report
3. Gas Gathering Line Definition
4. Remotely Controlled Valves on Natural Gas Pipelines
5. Update on the Local Distribution Company Risk Assessment Feasibility Team Initiative

All three meetings will be open to the public. Members of the public will have an opportunity to make short statements on the topics under discussion. Anyone wishing to make an oral statement must notify Peggy Thompson, Room 7128, Department of Transportation, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590, telephone (202) 366–1933, not later than October 15, 1999, on the topic of the statement and the time requested for presentation. The presiding officer at each meeting may deny any request to present an oral statement and may limit the time of any presentation.

Authority: 49 U.S.C. 60102, 60115.

Issued in Washington, DC, on September 30, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–25845 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–97–2879]

Pipeline Safety: Rapid Isolation of Ruptured Sections of Gas Transmission Pipelines

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of public meeting and request for comments.

SUMMARY: This notice announces a public meeting to consider the need for a rulemaking to establish time limits for isolating ruptured sections of gas transmission pipelines. The meeting agenda will include presentation of findings from a recent Office of Pipeline Safety (OPS) study on remote control valves (RCV) and opportunity for public comments and suggestions.

DATES: The public meeting will be on November 4, 1999, from 1:00 pm to 5:00 pm in Room 8236 of the Nassif Building, 400 Seventh Street, SW, Washington, DC. We encourage the public to present oral remarks at the public meeting. If you want to make an oral presentation at the meeting, please notify Jenny Donohue no later than October 28, 1999, by telephone at 202–366–4046 or by e-mail at *jenny.donohue@rspa.dot.gov.* Please indicate the approximate length of your presentation.

ADDRESSES: You may submit written comments no later than December 6, 1999, by mail or hand delivery to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify the docket number RSPA–97–2879. Persons should submit the original comment document and one (1) copy. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. You also may submit written comments to the docket electronically. To do so, log on to the following Internet Web address: *http://dms.dot.gov.* Click on ''Help & Information'' for instructions on how to file a document electronically. Late-filed comments will be considered so far as practicable.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Peggy Thompson at (202) 366–1933.

FOR FURTHER INFORMATION CONTACT: Lloyd Ulrich, OPS, (202) 366–4556, regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366–5046, for docket material. Comments may also be reviewed online at the DOT Docket Management System website at *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION: Since the March 23, 1994, Edison, New Jersey, pipeline failure in which two-and-one-half hours elapsed before the operator could locate and close functional valves, OPS has been exploring means of limiting the time for isolating ruptured sections of gas transmission pipelines. In 1995, NTSB recommended that RSPA expedite requirements for installing automatic-or remote-operated mainline valves on high-pressure pipelines in urban and environmentally sensitive areas to provide for rapid shutdown of failed pipeline segments. In the Federal pipeline safety law (49 U.S.C. 60102 (j)), Congress directed DOT to prescribe standards for the use of remote control valves (RCV), if a study showed that they reduced risk and were technically and economically feasible.

OPS has completed a study on RCVs titled ''Remotely Controlled Valves on Interstate Natural Gas Pipelines,'' which

is available in this Docket (RSPA–97–2879) and on the OPS website at http://ops.dot.gov. The study shows that installing and using RCVs can effectively limit the time required to isolate ruptured pipe sections when manual valve operation is not feasible, thereby minimizing the consequences of certain gas pipeline ruptures. The study supports RCVs' effectiveness, technical feasibility, and potential for reducing risk. We base these conclusions on an October 30, 1997, public meeting in Houston, Texas, a field evaluation of RCVs conducted by the Texas Eastern Transmission Corporation (TETCO), comments from the Technical Pipeline Safety Standards Committee (TPSSC), and a review of technical studies of RCVs and other valves.

Several factors must be considered in determining whether to establish a standard. Our study shows that the most significant consequences, including injuries, fatalities, and the majority of property and environmental damage, occur within the first few minutes of a rupture, before any valves (including RCVs) can be operated. Also, once valves have closed, a fire burning the residual gas in the isolated section could continue for the better part of an hour, depending on variables such as the section's length, pipe diameter, and operating pressure. Our study indicates that the quantifiable costs of RCV installations would almost always exceed the benefits.

However, we believe that significant risk exists at many locations as long as gas is being supplied to a rupture site, and operators lack the ability to quickly close existing manual valves. Any fire would be of greater intensity, and would have greater potential for damaging surrounding infrastructure, if the fire were constantly replenished with gas. Our data show that as much as 45% of gas transmission pipelines traverse commercial areas (including highways, railroads, other pipelines, airports, and businesses) and 6% are located within U.S. Census Bureau defined urban areas. The degree of disruption in these areas would be in direct proportion to the duration of the fire. Although we lack data to quantify the potential consequences, we believe considering a new standard limiting the time to isolate failed pipe in these areas merits further exploration. Under certain circumstances, we believe it may be appropriate to require RCVs or other measures to promptly isolate a failed pipeline section.

Also, setting a time limit for isolating a line following a rupture would determine when a fire could be extinguished. This knowledge provides a basis for risk assessment and response planning, important considerations in heavily populated or commercial areas, and important factors in maintaining public confidence in the safety of natural gas transmission pipelines.

Although it may be appropriate to issue a standard limiting the time to isolate failed pipe sections, we need additional information. At the November 4 public meeting we will present findings from our study on RCVs and solicit public comments and suggestions. To focus on the issue of establishing a time limit for isolating a ruptured pipeline section, we request that oral comments at the public meeting and written comments submitted to Docket No. RSPA–97–2879 include responses to the following six questions—

(1) What are the variables that should be considered in establishing a time-to-isolate standard? As an example, one variable could be the time for gas contained in the ruptured section to burn, if there is a fire, after the section is isolated by closing valves on each side of the rupture.

(2) Should an operator's time to isolate a ruptured pipeline section be the same in each class location? If not, what difference should there be in the time to isolate for each of the four class locations?

(3) Should the definitions for class location in 49 CFR 192.5 be revised to provide for more stringent requirements in areas where there would be more significant consequences from a ruptured transmission pipeline where the escaping gas caught fire? Examples of areas of more significant consequences are commercial areas and apartment buildings with high population concentrations.

(3)a. What are other examples of areas subject to more significant consequences in case of a transmission pipeline rupture where the escaping gas catches fire?

(3)b. Should areas of more significant consequences be included in the definitions for Class 3 and 4 locations or should separate sub-class locations be established for these areas?

(4) Should the transmission line valve spacing requirement in 49 CFR 192.179 be reduced for Class 3 and 4 locations in order to reduce the risk in locations of highest consequences? If not, why not?

(5) What should be the maximum time for closing valves to isolate a ruptured valve section? Should RCVs be installed to assure the closing time is not exceeded?

(6) Should there be a tiered approach to establishing a time-to-isolate standard, e.g., less time in Class 4 than in Class 3 locations?

Issued in Washington, DC, on September 30, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–25843 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Customs Service

List of Foreign Entities Violating Textile Transshipment and Country of Origin Rules

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document notifies the public of foreign entities which have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws. This list is authorized to be published by section 333 of the Uruguay Round Agreements Act.

FOR FURTHER INFORMATION CONTACT: For information regarding any of the operational aspects, contact Scott Greenberg, National Seizures and Penalties Officer, Seizures and Penalties Division, Office of Field Operations, (415) 782–9442. For information regarding any of the legal aspects, contact Ellen McClain, Office of Chief Counsel, at (202) 927–6900.

SUPPLEMENTARY INFORMATION:

Background

Section 333 of the Uruguay Round Agreements Act (URAA)(Public Law 103–465, 108 Stat. 4809)(signed December 8, 1994), entitled Textile Transshipments, amended Part V of title IV of the Tariff Act of 1930 by creating a section 592A (19 U.S.C. 1592A), which authorizes the Secretary of the Treasury to publish in the **Federal Register**, on a semiannual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities and/or persons have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied.

The violations of the customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates

a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the Customs territory of the United States of textile or apparel products; (3) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labeled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a petition, supplemental petition or second supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by sections 171.32 and 171.33, Customs Regulations (19 CFR 171.32, 171.33) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 30 days of the denial or allowance of mitigation, then the administrative action shall be deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury by the person named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

Reasonable Care Required

Section 592A also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Reliance solely upon information regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must involve reliance on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to section 592A of the Tariff Act of 1930, an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling is accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

(1) Has the importer had a prior relationship with the named party?
(2) Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?
(3) Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?
(4) Where a claim of an origin conferring process is made in accordance with 19 CFR 102.21, has the importer ascertained that the named party actually performed the required process?
(5) Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?
(6) Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?
(7) What is the history of this country regarding this commodity?
(8) Have you asked questions of your supplier regarding the origin of the product?
(9) Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

The law authorizes a semiannual publication of the names of the foreign entities and/or persons. On April 6, 1999, Customs published a Notice in the **Federal Register** (64 FR 16781) which identified 24 (twenty-four) entities which fell within the purview of section 592A of the Tariff Act of 1930.

592A List

For the period ending September 30, 1999, Customs has identified 26 (twenty-six) foreign entities that fall within the purview of section 592A of the Tariff Act of 1930. This list reflects the addition of 8 new entities and 6 removals to the 24 entities named on the list published on April 6, 1999. The parties on the current list were assessed a penalty claim under 19 U.S.C. 1592, for one or more of the four above-described violations. The administrative penalty action was concluded against the parties by one of the actions noted above as having terminated the administrative process.

The names and addresses of the 26 foreign parties which have been assessed penalties by Customs for violations of section 592 are listed below pursuant to section 592A. This list supersedes any previously published list. The names and addresses of the 26 foreign parties are as follows (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):

Austin Pang Gloves & Garments Factory, Ltd., Jade Heights, 52 Tai Chung Kiu Road, Flat G, 19/F, Shatin, New Territories, Hong Kong. (9/99)
Beautiful Flower Glove Manufactory, Kar Wah Industrial Building, 8 Leung Yip Street, Room 10–16, 4/F, Yuen Long, New Territories, Hong Kong. (9/99)
BF Manufacturing Company, Kar Wah Industrial Building, Leung Yip Street, Flat 13, 4/F, Yeun Long, New Territories, Hong Kong. (9/99)
Cupid Fashion Manufacturing Ltd., 17/F Block B, Wongs Factory Building, 368–370 Sha Tsui Road, Tsuen Wan, Hong Kong. (9/97)
Ease Keep, Ltd., 750 Nathan Road, Room 115, Kowloon, Hong Kong. (9/99)
Excelsior Industrial Company, 311–313 Nathan Road, Room 1, 15th Floor, Kowloon, Hong Kong. (9/98)

Eun Sung Guatemala, S.A., 13 Calle 3–62 Zona Colonia Landivar, Guatemala City, Guatemala. (3/98)
Everlast Glove Factory, Goldfield Industrial Centre, 1 Sui Wo Road, Room 15, 15th Floor, Fo Tan, Shatin, New Territories, Hong Kong. (3/99)
Fabrica de Artigos de Vestuario E-Full, Lda. Rua Um doi Bairro da Concordia, Deificio Industrial Vang Tai, 8th Floor, A–D, Macau. (9/99)
Fabrica de Artigos de Vestuario Fan Wek Limitada, Av. Venceslau de Morais, S/N 14 B–C, Centro Ind. Keck Seng (Torre 1), Macau. (9/99)
Fabrica de Artigos de Vestuario Pou Chi, Avenida General Castelo Branco, 13, Andar, ''C'' Edificio Wang Kai, Macau. (9/99)
Glory Growth Trading Company, No. 6 Ping Street, Flat 7–10, Block A, 21st Floor, New Trade Plaza, Shatin, New Territories, Hong Kong. (9/98)
Great Southern International Limited, Flat A, 13th floor, Foo Cheong Building, 82–86 Wing Lok Street, Central, Hong Kong. (9/98)
G.T. Plus Ltd., Kowloon Centre, 29–43 Ashley Road, 4/Fl, Tsimshatsui, Kowloon, Hong Kong. (3/99)
Jentex Industrial, 7–1 Fl., No. 246, Chang An E. Rd., Sec. 2, Taipei, Taiwan. (3/97)
Jiangxi Garments Import and Export Corp., Foreign Trade Building, 60 Zhangqian Road, Nanchang, China. (3/98)
Liable Trading Company, 1103 Kai Tak Commercial Building, 62–72 Stanley Street, Kowloon, Hong Kong. (9/98)
Lucky Mind Industrial Limited, Lincoln Centre, 20 Yip Fung Street, Flat 11, 5/F, Fan Ling, New Territories, Hong Kong. (9/99)
Mabco Limited, 6/F VIP Commercial Centre, 116–120 Canton Road, Kowloon, Hong Kong. (3/99)
McKowan Lowe & Company Limited, 1001–1012 Hope Sea Industrial Centre, 26 Lam Hing Street, Kowloon Bay, Kowloon, Hong Kong. (9/98)
Rex Industries Limited, VIP Commercial Center, 116–120 Canton Road, 11th Floor, Tsimshatsui, Kowloon, Hong Kong. (9/98)
Sannies Garment Factory, 35–41 Tai Lin Pai Road, Gold King Industrial Building, Flat A & B, 2nd Floor, Kwai Chung, New Territories, Hong Kong. (9/98)
Shing Fat Gloves & Rainwear, 2 Tai Lee Street, 1–2 Floor, Yuen Long, New Territories, Hong Kong. (9/98)
Sun Kong Glove Factory, 188 San Wan Road, Units 32–35, 3rd Floor, Block B, Sheung Shui, New Territories, Hong Kong. (9/98)
Sun Weaving Mill Ltd., Lee Sum Factory Building, Block 1 & 2, 23 Sze Mei Street, Sanpokong, Bk ½, Kowloon, Hong Kong. (9/97)
Takhi Corporation, Huvsgalchdyn Avenue, Ulaanbaatar 11, Mongolia. (3/98)

Any of the above parties may petition to have its name removed from the list. Such petitions, to include any documentation that the petitioner deems pertinent to the petition, should be forwarded to the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Additional Foreign Entities

In the April 6, 1999, **Federal Register** notice, Customs also solicited information regarding the whereabouts of 31 foreign entities, which were identified by name and known address, concerning alleged violations of section 592. Persons with knowledge of the whereabouts of those 31 entities were requested to contact the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

In this document, a new list is being published which contains the names and last known addresses of 32 entities. This reflects the addition of two new entities and the removal of 1 entity to the list of 31 entities published on April 6, 1999.

Customs is soliciting information regarding the whereabouts of the following 32 foreign entities concerning alleged violations of section 592. Their names and last known addresses are listed below (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):

Au Mi Wedding Dresses Company, Dragon Industry Building, 98, King Law Street, Unit F, 9/F, Lai Chi Kok, Kowloon, Hong Kong. (9/99)
Balmar Export Pte. Ltd., No. 7 Kampong Kayu Road, Singapore, 1543. (3/98)
Envestisman Sanayi A.S., Buyukdere Cad 47, Tek Is Merkezi, Istanbul, Turkey. (9/97)
Essence Garment Making Factory, Splendid Centre, 100 Larch Street, Flat D, 5th Floor, Taikoktsui, Kowloon, Hong Kong. (3/98)
Fabrica de Artigos de Vest. Dynasty, Lda., Avenida do Almirante Magalhaes Correia, Edificio Industrial Keck Seng, Block III, 4th Floor ''UV'', Macau. (3/98)
Fabrica de Artigos de Vestuario Lei Kou, No. 45 Estrada Marginal de Areia Preta, Edif.Ind.Centro Polytex, 6th Floor, D, Macau. (9/98)
Fabrica de Vestuario Wing Tai, 45 Estrada Marginal Da Areia Preta, Edif. Centro Poltex, 3/E, Macau. (3/98)
Galaxy Gloves Factory, Annking Industrial Building, Wang Yip East Street Room A, 2/F, Lot 357, Yuen Long Industrial Estate, Yuen Long, New Territories, Hong Kong. (3/98)
Golden Perfect Garment Factory, Wong's Industrial Building, 33 Hung To Road, 3rd Floor, Kwun Tong, Kowloon, Hong Kong. (9/98)
Golden Wheel Garment Factory, Flat A, 10/F, Tontex Industrial Building, 2–4 Sheung Hei Street, San Po Kong, Kowloon, Hong Kong. (9/99)
Grey Rose Maldives, Phoenix Villa, Majeedee Magu, Male, Republic of Maldives. (3/98)
K & J Enterprises, Witty Commercial Building, 1A–1L Tung Choi Street, Room 1912F, Mong Kok, Kowloon, Hong Kong. (9/98)
Konivon Development Corp., Shun Tak Center, 200 Connaught Road, No. 3204, Hong Kong. (3/98)
Kwuk Yuk Garment Factory, Kwong Industrial Building, 39–41 Beech St., Flat A, 11th Floor, Tai Kok Tsui, Kowloon, Hong Kong. (3/98)
Land Global Ltd., Block c, 14/F, Y.P. Fat Building, Phase 1,
77 Hoi Yuen Road, Kowloon, Hong Kong. (9/97)
Leader Glove Factory, Tai Ping Industrial Centre, 57, Ting Kok Road, 25/F, Block 1, Flat A, Tai Po, New Territories, Hong Kong. (3/98)
Maxwell Garment Factory, Unit C, 21/F, 78–84, Wang Lung Street, Tseun Wan, New Territories, Hong Kong. (3/99)
New Leo Garment Factory Ltd, Galaxy Factory Building, 25–27 Luk Hop Street, Unit B, 18th Floor, San Po Kong, Kowloon, Hong Kong. (9/98)
Patenter Trading Company, Block C. 14/F, Yip Fat Industrial Building, Phase 1, 77 Hoi Yuen Road, Kowloon, Hong Kong. (9/97)
Penta-5 Holding (HK) Ltd., Metro Center II, 21 Lam Hing Street, Room 1907, Kowloon Bay, Kowloon, Hong Kong. (9/98)
Round Ford Investments, 37–39 Ma Tau Wai Road, 13/f Tower B, Kowloon, Hong Kong. (9/97)
Shanghai Yang Yuan Garment Factory, 2 Zhaogao Road, Chuanshin, Shanghai, China. (9/97)
Silver Pacific Enterprises Ltd., Shun Tak Center, 200 Connaught Road, No. 3204, Hong Kong. (3/98)
Tak Hing Textile Company Limited, Wo Fung Industrial Building, 3/F, block D, Lot No. 5180, IN D.D 51, On Lok Village, Fanling, New Territories, Hong Kong. (3/99)
Tat Hing Garment Factory, Tat Cheong Industrial Building, 3 Wing Ming

Street, Block C, 13/F, Lai Chi Kok, Kowloon, Hong Kong. (3/98)
Tientak Glove Factory Limited, 1 Ting Kok Road, Block A, 26/F, Tai Po, New Territories, Hong Kong. (3/98)
United Textile and Weaving, P.O. Box 40355, Sharjah, United Arab Emirates. (3/97)
Wealthy Dart, Wing Ka Industrial Building, 87 Larch Street, 7th Floor, Kowloon, Hong Kong. (3/98)
Wilson Industrial Company, Yip Fat Factory Building, 77 Hoi Yuen Road, Room B, 3/F, Kwun Yong, Kowloon, Hong Kong. (3/98)
Wing Lung Manufactory, Hing Wah Industrial Building, Units 2, 5–8, 4th Floor YLTL 373, Yuen Long, New Territories, Hong Kong. (9/98)
Yogay Fashion Garment Factory Ltd, Lee Wan Industrial Building, 5 Luk Hop Street, San Po Kong, Kowloon, Hong Kong. (3/98)
Zuun Mod Garment Factory Ltd., Tuv Aimag, Mongolia. (9/97)

If you have any information as to a correct mailing address for any of the above 32 firms, please send that information to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Dated: September 29, 1999.

Charles W. Winwood,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 99–25786 Filed 10–4–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Queens, New York.

DATES: The meeting will be held Friday October 29, 1999.

FOR FURTHER INFORMATION CONTACT: Kevin McKeon at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Friday October 29, 1999, 6:00 p.m. to 9:00 p.m. at the Internal Revenue Service Brooklyn Building located at One Lefrak City Plaza, Corona, Queens, NY 11368. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Kevin McKeon. Mr. McKeon can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 6:00 p.m. to 6:30 p.m. on Friday October 22, 1999.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Kevin McKeon, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: September 24, 1999.

MaryClare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 99–25879 Filed 10–4–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Friday October 8, 1999.

FOR FURTHER INFORMATION CONTACT: Kevin McKeon at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Friday October 8, 1999, 6:00 p.m. to 9:00 p.m. at the Internal Revenue Service Brooklyn Headquarters Building located at 625 Fulton Street, Brooklyn, NY 11201.

For more information or to confirm attendance, notification of intent to attend the meeting must be made with Kevin McKeon. Mr. McKeon can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 6:00 p.m. to 6:30 p.m. on Friday October 8, 1999.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Kevin McKeon, CAP Office, P.O. Box R, Brooklyn, NY 11201. The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: September 24, 1999.

MaryClare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 99–25880 Filed 10–4–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, South Florida

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the So. Florida Citizen Advocacy Panel will be held in Sunrise, Florida.

DATES: The meeting will be held Friday, October 15, 1999 and Saturday, October 16, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227, or 954–423–7973.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Friday, October 15, 1999 from 6:00 p.m. to 9:00 p.m. and Saturday, October 16, 1999 from 9:00 a.m. to 1:00 p.m., in Room 225, CAP Office, 7771 W. Oakland Park Blvd., Sunrise, Florida 33351. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 954–423–7973, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd., Rm. 225, Sunrise, FL 33351. Due to limited conference space, notification of intent to attend the meeting must be made with Nancy Ferree. Ms. Ferree can be reached at 1–888–912–1227 or 954–423–7973. The agenda will include the following: various IRS issue updates and reports by the CAP sub-groups.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: September 24, 1999.

MaryClare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 99–25881 Filed 10–4–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0101]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the requirements of eligibility verification reports.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 6, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0101'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Numbers: Eligibility Verification Reports (EVR) (Eleven of the EVRs are computer-generated forms which may be dispatched from VA's central computer. The remaining 11 forms (those with a ''-1'' suffix on the form number) are stocked forms).

a. Old Law Eligibility Verification Report (Surviving Spouse), VA Forms 21–0511S and 21–05151S–1.

b. Old Law Eligibility Verification Report (Veteran), VA Forms 21–0511V and 21–0511V–1.

c. Section 306 Eligibility Verification Report (Surviving Spouse), VA Forms 21–0512S and 21–0512S–1.

d. Section 306 Eligibility Verification Report (Veteran), VA Forms 21–0512V and 21–0512V–1.

e. Old Law and Section 306 Eligibility Verification Report (Children Only), VA Forms 21–0513 and 21–0513–1.

f. DIC Parent's Eligibility Verification Report, VA Forms 21–0514 and 21–0514–1.

g. Improved Pension Eligibility Verification Report (Veteran With No Children), VA Forms 21–0516 and 21–0516–1.

h. Improved Pension Eligibility Verification Report (Veteran With Children), VA Forms 21–0517 and 21–0517–1.

i. Improved Pension Eligibility Verification Report (Surviving Spouse With No Children), VA Forms 21–0518 and 21–0518–1.

j. Improved Pension Eligibility Verification Report (Child or Children), VA Forms 21–0519C and 21–0519C–1.

k. Improved Pension Eligibility Verification Report (Surviving Spouse With Children), VA Forms 21–0519S and 21–0519S–1.

OMB Control Number: 2900–0101.

Type of Review: Extension of a currently approved collection.

Abstract: The Eligibility Verification Reports are used to report changes in entitlement factors in VA's income-based benefit programs, pension and parents' Dependency and Indemnity Compensation (DIC). Any individual who has applied for or receives pension or parents' DIC must promptly notify VA in writing of any changes in entitlement factors. The reports are also used to confirm that there have been no changes in entitlement factors.

Affected Public: Individuals or households.

Estimated Annual Burden: 146,947 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 293,894.

Dated: August 20, 1999.

By direction of the Secretary:

Sandra McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–25870 Filed 10–4–99; 8:45 am]

BILLING CODE 8320–01–P

federal register

Tuesday
October 5, 1999

Part II

Department of Agriculture

Forest Service

36 CFR Parts 217 and 219

National Forest System Land and Resource Management Planning; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 217 and 219

RIN 0596–AB20

National Forest System Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department requests comment on a proposed rule to guide land and resource management planning for the National Forest System. This proposed rule describes the framework for National Forest System planning; makes sustainability the foundation for National Forest System planning and management; and establishes requirements for implementation, monitoring, evaluation, amendment, and revision of land and resource management plans. The intended effects are to simplify, clarify and otherwise improve the planning process; to reduce burdensome and costly procedural requirements; and to strengthen collaborative relationships with the public and other government entities.

DATES: Comments must be submitted in writing and received by January 4, 2000. Public meetings will be held at places and on dates yet to be determined. Notice of the times, places, and locations will be published in a future edition of the **Federal Register**.

ADDRESSES: Send written comments to the CAET–USDA, Att. Planning Rule, Forest Service, USDA, 200 East Broadway, Room 103, P.O. Box 7669, Missoula, Montana 59807, via email at planreg/wo__caet@fs.fed.us, or FAX (406) 329–3021.

Comments, including names and addresses when provided, are subject to public inspection and copying. The public may inspect comments received on this proposed rule in the Office of Deputy Chief, Third Floor, Southwest Wing, Yates Building, 14th and Independence Avenue, SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Robert S. Cunningham at (406) 329–3388.

SUPPLEMENTARY INFORMATION: The following outline displays the contents of the preamble to this proposed rule.

Background
National Forest Management Act Requirements
The Proposed Planning Process
Section-by-Section Description of the Proposed Rule

Purpose, Goals, and Principles

Proposed section 219.1—Purpose.
Proposed section 219.2—Goals and principles for planning.

The Framework for Planning

Proposed section 219.3—Overview.
Proposed section 219.4—Topics of general interest or concern.
Proposed section 219.5—Information development and interpretation.
Proposed section 219.6—Proposed actions.
Proposed section 219.7—Plan decisions that guide future actions.
Proposed section 219.8—Amendment.
Proposed section 219.9—Revision.
Proposed section 219.10—Site-specific decisions and authorized uses of land.
Proposed section 219.11—Monitoring and evaluation.

Collaborative Planning for Sustainability

Proposed section 219.12—Collaboration and cooperatively developed landscape goals.
Proposed section 219.13—Coordination among federal agencies.
Proposed section 219.14—Involvement of state and local governments.
Proposed section 219.15—Interaction with American Indian Tribes and Alaska.
Proposed section 219.16—Relationships with interested individuals and organizations.
Proposed section 219.17—Interaction with private landowners.
Proposed section 219.18—Role of advisory groups and committees.

Ecological, Social, and Economic Sustainability

Proposed section 219.19—Ecological, social, and economic sustainability.
Proposed section 219.20—Ecological sustainability.
Proposed section 219.21—Social and economic sustainability.

The Contribution of Science

Proposed section 219.22—The role of assessments, analyses, and monitoring.
Proposed section 219.23—The participation of scientists in planning.
Proposed section 219.24—Science consistency evaluations.
Proposed section 219.25—Science advisory boards.

Special Considerations

Proposed section 219.26—Identifying and designating suitable uses.
Proposed section 219.27—Special designations.
Proposed section 219.28—Determination of land suitable for timber removal.
Proposed section 219.29—Limitation on timber removal.

Planning Documentation

Proposed section 219.30—Land and resource management plan documentation.
Proposed section 219.31—Maintenance of the plan and planning records.

Objections and Appeals

Proposed section 219.32—Objections to amendments or revisions.
Proposed section 219.33—Appeals of site-specific decisions.

Applicability and Transition

Proposed section 219.34—Applicability.
Proposed section 219.35—Transition.

Definitions

Proposed section 219.36—Definitions.
Public Comment Invited

Regulatory Certifications

Regulatory Impact
No Takings Implications
Civil Justice Reform Act
Unfunded Mandates Reform
Environmental Impact
Controlling Paperwork Burdens on The Public Description of the Information Collection Use of Comments
Federalism

Background

The Forest Service is responsible for managing the lands and resources of the National Forest System which includes 192 million acres of land in 42 states, the Virgin Islands, and Puerto Rico. The system is composed of 155 national forests, 20 national grasslands, and various other lands under the jurisdiction of the Secretary of Agriculture (the Secretary). According to the Multiple-Use Sustained-Yield Act of 1960 (MUSYA) (16 U.S.C. 528) and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*), the National Forest System lands are to be managed for a variety of uses on a sustained-yield basis to ensure a continued supply of products and services in perpetuity.

The National Forest Management Act (NFMA) guides land management planning for National Forest System lands. It directs the Secretary to develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System and sets forth the requirements for doing so. During the 23 years since enactment of NFMA, much has been learned about land and resource management planning. Yet, many controversial issues regarding the appropriate short- and long-term use of national forests and grasslands remain.

While some advocates of land and resource management planning believed it would lead to resolution of the issues associated with the management of natural resources, it has not. Difficult issues remain among competing interests. Land and resource management planning and attendant decisionmaking cannot be expected to resolve all problems; however, improved planning procedures can more fully engage the public and lead to mutually developed landscape goals and improved public participation in

decisionmaking. The expanded requirements for collaboration and scientific input in the proposed new planning process will result in expanded management choices and more fully informed decisionmaking to ensure the long-term sustainability and health of national forests and grasslands.

In March 1989, the Forest Service initiated a comprehensive review of its land and resource management planning process. Results of the review were published in May 1990, in a summary report entitled ''Synthesis of the Critique of Land Management Planning'' (Vol. 1), accompanied by ten other more detailed reports. The 1990 Critique documented lessons learned since passage of the NFMA and adoption of initial plans under that law. The Critique provided recommendations to improve planning and the management of national forests and grasslands and to more effectively engage the public in addressing future natural resource management challenges.

On February 15, 1991, the Forest Service published an Advance Notice of Proposed Rulemaking (56 FR 6508) which included preliminary regulatory text revising the existing planning rule. Four public informational meetings were held to explain and discuss ideas for revising the planning procedure. Over 600 individuals and several groups of people submitted written comments. These comments were used in the development of a proposed rule published on April 13, 1995 (60 FR 18886).

A substantial number of public comments were received on the proposed rule, generally expressing dissatisfaction with proposed changes in the planning process. In part, as a result of public concern with changes proposed, the Secretary elected not to proceed with this proposal.

In order to take a fresh look at the issues associated with land and resource management planning and to obtain an independent perspective, in December 1997, the Secretary of Agriculture convened a 13-member Committee of Scientists to review the Forest Service planning process and to offer recommendations for improvements. The Committee's charter was to ''provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made in the National Forest System Land and Resource Management Planning Process and to address such topics as how to consider the following in land and resource management plans: biological diversity, use of ecosystem assessments in land and resource management planning, spatial and temporal scales for planning, public participation processes, sustainable forestry, interdisciplinary analysis, and any other issues that the Committee identifies that should be addressed in revised planning regulations.'' USDA Under Secretary Lyons noted at the Committee's initial meeting that the Committee's challenge was to ''produce a set of recommendations that will guide us in developing the next generation of forest plans.''

Following a series of meetings around the country with Forest Service employees, representatives of tribes, state and local governments, related federal natural resource agencies, and members of the public, the Committee of Scientists issued a final report on March 15, 1999. The Committee recognized the extraordinary legacy that is the National Forest System and characterized these lands as ''a grand experiment in multiple-use management.'' The Committee concluded that, through careful management, National Forest System lands can continue to provide many and diverse benefits to the American people in perpetuity. These benefits include clean air and water, productive soils, biological diversity, a wide variety of products and services, employment, community development opportunities, and recreation. National Forest System lands also can provide incalculable benefits such as beauty, inspiration, wonder, and a refuge for the renewal of the human spirit. Finally, recognizing innovative efforts in the field, the Committee concluded that the Forest Service, as the steward of the people's lands, can improve its planning and decisionmaking by relying on the concepts and principles of sustainable natural resource stewardship, by applying the best available scientific knowledge to management choices, and by effectively collaborating with a broad array of citizens, other public servants, and governmental and private entities.

Based on the Committee of Scientists' findings, the draft regulatory text it contained, and over two decades of experience in developing and implementing land and resource management plans, a team of Forest Service employees, aided by an interagency steering committee, prepared this proposed rule. The Forest Service rule writing team was selected from different management levels within the organization and included representation from the National Forest System, Research, and State and Private program areas. In addition to the Committee's report, in developing this proposed rule the team also considered the 1990 Critique of land and resource management planning, and the various laws, regulations, and reports influential in guiding planning and management of the National Forest System, including, but not limited to:

The National Forest Management Act;

The National Environmental Policy Act;

The Multiple-Use Sustained-Yield Act;

The Endangered Species Act;

The Federal Land Policy and Management Act;

Administrative direction in the Forest Service Manual and Handbooks;

The Council on Environmental Quality, ''The Cumulative Effects Handbook''

The 1983 Bureau of Land Management Planning Regulations (40 CFR Part 1600); and

The Council on Environmental Quality, ''The National Environmental Policy Act: A Study of its Effectiveness After Twenty-five Years.''

National Forest Management Act Requirements

Section 6 of the National Forest Management Act (NFMA) specifies the requirements for the regulations that guide National Forest System planning. A synopsis of those requirements follows, along with an identification of the sections of the proposed planning rule where the requirements are addressed.

Section 6(d) of NFMA requires public participation in the development, review, and revision of land management plans. In response to this provision and the Committee's strong recommendations on collaborative planning, the proposed rule places increased emphasis on the cooperative development of land management plans, requiring planners and managers to provide the opportunity and motivation for public participation in every phase of the planning process. In § 219.2(d)(1) of the proposed rule, the goal, as written by the Committee of Scientists, specifically speaks to meaningfully engaging the American people in the stewardship of their national forests and grasslands to ''build stewardship capacity.'' Sections 219.12 through 219.18 (Collaborative planning for sustainability) would establish the requirements for public involvement including consultation and interaction with American Indian Tribes and Alaska Natives, adjacent landowners and interested individuals as well as establishing the requirements for involving state and local governments

and coordinating planning with other federal agencies. The requirements for public involvement described in these sections are a key feature in the proposed planning rule.

Section 6(e) of NFMA requires plans to provide for: (1) The multiple-use and sustained-yield of products and services from National Forest System lands; and (2) the determination of forest silvicultural systems, harvest levels and procedures, and the availability of lands and their suitability for timber production.

The multiple-use, sustained-yield objective is embodied in the goal at § 219.2(b)(1). Sections 219.19 through 219.21 make ecological, social, and economic sustainability the overall goal for National Forest System management to provide for the multiple-use and sustained-yield of the products and services derived there from. Additional statutory requirements, including timber management systems (§ 219.7), harvest levels, and availability and suitability of lands, are incorporated in §§ 219.26 through 219.29 (Special considerations).

Section 6(f) of NFMA lists five requirements: (1) The development of one integrated land and resource management plan for each unit of the National Forest System; (2) the embodiment of the plan in appropriate written material; (3) interdisciplinary plan development; (4) amendment of the plan as needed; and (5) revision of the plan from time to time or at least every 15 years. The requirements of this section are addressed in §§ 219.3 through 219.11 which describe the proposed planning framework, in §§ 219.30 and 219.31 (Planning documentation) which describe the content of a land and resource management plan, and in § 219.8 (Amendment) and § 219.9 (Revision).

Section 6(g) of NFMA requires the development of planning regulations that are in compliance with the Multiple-Use Sustained-Yield Act. Section 6(g) also requires: (1) Compliance with the National Environmental Policy Act (NEPA); (2) guidelines for the identification of land suitability, gathering inventory data and the identification of resource hazards; and (3) guidelines that ensure economic and environmental aspects of resource management; ensure maintenance of the diversity of plant and animal species; ensure that research is conducted; permit increases in harvest based on specific requirements; ensure the harvest of timber based on various resource conditions; specify silvicultural requirements; identify riparian or wetland protection needs; and describe specific harvest systems and size limitations for fundamental resource protection.

In § 219.12 (Collaboration and cooperatively developed landscape goals), the proposed rule addresses application of the nation's environmental policy as described in the NEPA. Compliance with the procedural requirements of NEPA is addressed in §§ 219.3 through 219.11 (The framework for planning). It is important to note that the Forest Service NEPA procedures are to guide decisionmaking procedures described in these sections.

Land suitability and the identification of special conditions and resource hazards are addressed in § 219.26 (Identifying and designating suitable uses) and in § 219.27 (Special designations). Inventory data collection is addressed in §§ 219.22 through 219.25 (The contribution of science) and § 219.5 (Information development and interpretation).

The economic and environmental aspects of resource management are addressed in §§ 219.19 through 219.21 (Ecological, social and economic sustainability), § 219.4 (Topics of general interest or concern) and in § 219.6 (Proposed actions). The diversity of plant and animal species, protection of riparian or wetland resources, and research needs are addressed indirectly in §§ 219.22 through 219.25 (The contribution of science), and directly in §§ 219.19 through 219.21 (Ecological, social and economic sustainability). Various requirements for the management of timber resources are addressed in § 219.28 (Determination of land suitable for timber removal) and § 219.29 (Limitation on timber removal). Fundamental natural resource protection is highlighted in §§ 219.3 through 219.11 (The framework for planning) and in §§ 219.19 through 219.21 (Ecological, social, and economic sustainability).

Sections 6(i) and (j) of NFMA require that resource management actions be consistent with land management plan direction and define when plans become effective. Consistency with land and resource management plan decisions and the date when land and resource management plans become effective are addressed in §§ 219.3 through 219.11 (The framework for planning) and in § 219.35 (Transition).

Section 6(k) of NFMA requires the identification of lands not suitable for timber production. Section (6)(k)(1) requires a process for estimating long-term costs and benefits related to timber management; and section (6)(k)(2) requires a summary of this information in the form of an annual report. The final part of Section 6(k)(2) requires standards to ensure that trees have reached the culmination of mean annual increment, the use of sound silvicultural practices, and that standards do not preclude salvage or sanitation harvest. Exceptions to these standards include consideration of other resource uses.

The requirement for the identification of lands not suitable for timber production is included in § 219.28 (Determination of land suitable for timber removal). The process for estimating long-term costs and benefits related to timber management is addressed in § 219.21 (Social and economic sustainability). The requirement for a summary of information in the form of an annual report is included in §§ 219.30 and 219.31 (Planning documentation). The procedures to ensure harvest of timber within the requirements of NFMA including the mean annual increment, the practice of sound silvicultural systems, and direction for salvage or sanitation harvests are included in the Forest Service Directive System.

The Proposed Planning Process

Statutory Background and Overview

Under the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (NFMA), the Secretary of Agriculture is required to ''develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System.'' 16 U.S.C. 1604(a). Land and resource management plans, in large part, furnish overall programmatic guidance for the management of individual national forests and grasslands and the design of site-specific projects such as timber sales or watershed restoration projects.

Currently, all national forests and grasslands are operating under land and resource management plans developed under the existing forest planning regulations. There are two ways that these plans can be changed: revision and amendment. The NFMA requires revision of plans at least every 15 years, and revision can also occur whenever circumstances affecting the entire plan area or major portions of it have changed significantly. The proposed rule will set standards for the upcoming revision of most of the existing land and resource management plans, which were adopted in the 1980's and early 1990's. Amendment is a means of updating the forest plan's programmatic direction between the periodic revisions that must occur every 15 years. The proposed rule provides for a flexible

ongoing process of investigating and responding to new information, which can lead to either the revision or amendment of plans or the development of appropriate site-specific projects to address changing circumstances as they arise.

The Content of Plans

Under the proposed rule, land and resource management plans would contain four categories of decisions (§ 219.7). First, they establish desired resource conditions to achieve long-term sustainability (which may include, but are not limited to, the desired watershed and ecological conditions and aquatic and terrestrial habitat characteristics). Second, the plans contain goals (statements of intent), objectives (measurable results intended to achieve goals), standards, and guidelines. The standards and guidelines provide criteria for the design of site-specific projects that address such important considerations as species and their habitat, timber harvest guidelines, and watershed integrity. Third, plans include the designation and identification of suitable uses within the plan area (*e.g.*, lands where timber production is an appropriate objective) and designations of special areas. Finally, the plans contain monitoring and evaluation requirements, which guide ongoing forest or grassland management.

The addition, removal, or modification of any of these decisions requires either revision or amendment of the plan.

Revision

Under the proposed planning rule, a land and resource management plan must be revised whenever circumstances affecting the entire plan area or major portions of the plan area have changed significantly or the plan has reached its 15-year statutory age limit (§ 219.9). To begin the revision process, the responsible officials would summarize existing information and provide for scientific review of the effectiveness of current management, among other steps, and make this information available for public review. The responsible officials must then publish a Notice of Intent to revise in the **Federal Register**, and provide for a second opportunity for public comment for at least 45 days regarding the scope of the proposed revision. Following any adjustment in the scope of the revision in response to these comments, the responsible officials must prepare a NEPA document on the proposed revision and provide at least a 90-day public comment period.

Any person may file objections to a proposed revision within 30 days of publication of the availability of the final NEPA document (§ 219.32). The responsible official must prepare a written response to the objection by the time a decision is reached. Any final decision to revise plans will become effective 30 days after notice of the decision is published in the **Federal Register**.

Amendment

In addition to revision, a land and resource management plan may also be amended (§ 219.8) to add, remove, or modify one or more of the decisions embodied in a forest plan.

Like other Forest Service actions, proposed amendments require compliance with NEPA. As part of the NEPA process, the responsible official must determine whether the significance of the proposed amendment's impact on the environment, and whether an environmental impact statement is required. The NFMA also requires that the Forest Services determine whether amendments are significant under this statute as well. The proposed rule simplifies this NFMA finding by linking it to the required significance determination under NEPA. Thus, the responsible official must make only one determination of significance, under the well-known standards of NEPA. For significant amendments, the preparation of an environmental impact statement and a 90-day public comment period are required. For non-significant amendments, less detailed levels of NEPA compliance such as the preparation of environmental assessments are appropriate. There is the same opportunity for persons to file objections to proposed amendments as there is for proposed revisions (§ 219.32). All decisions to approve amendments become effective after the responsible official gives notice of the proposed decision.

Site-Specific Projects

The NFMA provides that ''[r]esource plans and permits, contracts, and other instruments for the use and occupancy of the National Forest System lands shall be consistent with the land management plans.'' 16 U.S.C. 1604 (i). If a proposed site-specific activity is not consistent with the land management plan, the responsible official may ''[m]odify the proposal to make it consistent with the plan''; ''[r]eject the proposal''; or ''[a]mend the plan to permit the proposal.'' 53 FR 26,836 (1988). However, the fact that a proposed activity is consistent with the applicable land management plan does not mean that it will actually go forward, or that it can be undertaken without further scrutiny. Rather, when an individual project (such as a timber sale or closure and obliteration of an unneeded road) is proposed, the agency undertakes an individual study of its likely environmental effects and renders a formal decision regarding it. The Forest Service is required by statute to provide opportunities for public notice and comment, along with a right of administrative appeal for all ''proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans.''

Ongoing Process

The proposed planning rule sets out an innovative planning framework to update land and resource management plans. The goal is to create a planning process that enables responsible officials to amend their plans quickly and soundly in response to new information or changed conditions.

Formally, the proposed planning process (Appendix A) for updating plans begins with a topic(s) of general interest or concern (§ 219.4). Sources for these topics of general interest or concern may include new Forest Service conservation initiatives, enactment of new laws or policies, discussions among people, organizations, or governments, etc. or information generated from a later stage of the planning process. For example, monitoring and evaluation plays a key role in the proposed planning process. Under the proposed rule, information from inventory and monitoring would feed back into the proposed planning process at various points throughout the process and could lead to the development of a topic of general interest or concern. Information from a broad-scale assessment or local analysis could also lead to the development of a topic of general interest or concern.

Once a general topic of concern arises, the responsible official would have to determine whether the topic should receive consideration (§ 219.4). In so doing, the official would consider the criteria listed in § 219.4(b). If, after using these criteria, the responsible official determined that a topic of general interest or concern should receive further consideration, the responsible official would then evaluate whether adequate information existed about the topic (§ 219.5). Information could come from a number of existing sources, including existing inventories, broad-scale assessments, local analyses, or from information voluntarily submitted from interested parties. If obtaining

more information was desirable and could be obtained at a reasonable cost and in a timely manner, a broad-scale assessment or local analysis could be developed or supplemented.

Broad-scale assessments provide information regarding ecological, economic, or social topics that are broad in geographic scale. In most cases, they go well beyond individual national forest and grassland boundaries. The results from assessments are not proposed actions or decisions subject to NEPA procedures. But under the proposed rule, their findings and conclusions could be used to inform the planning process and/or develop new topics of general interest or concern. Similarly, local analyses provide information that aids in the identification of possible actions or projects on a more local scale. Depending on the situation, broad-scale assessments and local analyses should provide information related to ecological factors set forth in § 219.20 and/or social and economic factors set forth in § 219.21. These assessments and analyses do not make decisions, but instead provide information which may assist in subsequent decisions. Although the assessments and analyses will often involve extensive public participation, persons only have legal rights to comment or participate if the responsible officials make actual decisions regarding revisions, amendments, or site-specific projects. If the assessments or analyses affect actual decisions, the public will necessarily have an opportunity to comment before actual decisions are made. Furthermore, there is no right to judicial review of the broad-scale assessments and local analyses, which responsible officials are encouraged rather than legally mandated to undertake to update their knowledge of changing conditions.

Based on consideration of the criteria in § 219.4(b) and available information in § 219.5, responsible officials could propose to revise a plan, amend it, and/or propose a site-specific project (§ 219.10). In each case, they would be required to analyze alternatives and effects of the proposal in conformance with agency NEPA procedures. A formal NEPA process would ensue, although, a responsible official may use the above planning process to accomplish the NEPA scoping process. These decisions all give the public opportunities for input, either through objections (revision or amendment), or notice and comment and administrative appeal (site-specific projects).

Monitoring and evaluation assess the effectiveness of the plan (§ 219.11). Under the proposed rule, monitoring and evaluation would aid in identification of new topics of general interest or concern, the development of new assessments, and the selection process for site-specific projects.

Although monitoring and evaluation is the last step in describing the planning process, it does not end the planning process. Indeed, in practice these monitoring and evaluation requirements, like the broad-scale assessments and local analyses described above, would provide important feedback information that would continuously link planning to plan implementation. Under the proposed planning rule, a national forest or grassland, like a business or other large organization, would always be ready to respond quickly to new information or changed conditions.

Under the proposed rule, the exact planning process might be very different on two different national forests or grasslands, depending on the amount of monitoring and assessment information that exists, the problems and opportunities facing the administrative units, the level of public involvement in the planning process, etc. These differences would enable National Forest and Grassland Supervisors to amend or revise their land and resource management plans in ways that best match the complex issues and conditions they face. It would also make planning a meaningful exercise that better promotes the health of the resources on our national forests and grasslands setting more realistic expectations for the goods, services, and amenities the national forests and grasslands can provide. Of course, plans would still have to meet the broad framework goals and principles for planning and specific requirements in the proposed rule.

Key Elements of Planning

The proposed planning process is built upon the fundamental statutes that have guided national forest management for nearly a century as well as the wealth of experience gained since the passage of NFMA and the initiation of the land and resource management process. The Committee of Scientists' report serves as a synthesis of this information and provides valuable guidance in understanding the successes and failures of forest planning to date.

The proposed rule sets forth a new collaborative, adaptable planning process that fully engages the public and requires use of the best available science to ensure informed decisionmaking. The process set forth in the proposed rule creates opportunities for people, communities, and organizations to work together to develop mutual understanding regarding desired resource conditions and outcomes as well as to develop multiple-use management options designed to achieve desired resource conditions and outcomes in ways that respond to public interests or concerns. Consistent with the 1990 Critique, as validated by the Committee of Scientists' report, the proposed rule emphasizes monitoring and evaluation so that managers and others can evaluate management performance, determine if desired and/or anticipated outcomes are achieved, and adapt as resource conditions change over time. This emphasis is in keeping with NFMA's mandate to evaluate the effects of management systems, based on continuous monitoring and assessment in the field, to ensure that substantial and permanent impairment of the productivity of the land will not result (16 U.S.C. 1604(g)(3)(C)).

The proposed rule would affirm ecological, social, and economic sustainability as the overall goal for management of National Forest System lands. To achieve sustainability, the first priority for management is the maintenance and restoration of ecological sustainability to provide a sustainable flow of products, services and other values from these lands. As the Committee of Scientists explained, making ecological sustainability the first priority does not mean that the agency will maximize the protection of plant and animal species to the exclusion of human values and uses. Rather, it means that, without ecologically sustainable systems, other uses of the lands and their resources would be impaired (Committee of Scientists' report, page xvi.).

The proposed rule also would simplify required planning steps to enable responsible officials to more readily address emerging issues than is now possible with current required planning steps. For example, the proposed rule would clarify that, where appropriate, multiple planning activities of one or more national forests or grasslands can be combined among administrative boundaries. Additionally, current requirements for detailed analyses, such as those required for benchmark analyses, would be streamlined or eliminated. The current regulatory criteria for determining whether a proposed amendment would result in a significant change in a plan, triggering requirements under section 6(f)(4) of NFMA, would be revised. Under the proposed rule, the significance of a

proposed amendment for NFMA purposes would be linked to the threshold for significance under NEPA procedures. This will coordinate NFMA and NEPA requirements, and eliminate confusion associated with having two different thresholds for significance in the planning process. The proposed rule also allows the steps in the planning framework to be coordinated with the scoping requirements under the Forest Service NEPA procedures when appropriate. This will reduce duplication when preparing environmental documents associated with management of the National Forest System.

A key element of the proposed rule is increased emphasis on collaboration as a means to encourage broader public participation in the planning process. The rules provide for regular and sustained involvement of other federal natural resource agencies, tribal governments, state and local governments, interested organizations, and the public in a continuing process of discussion and collaboration.

The Committee of Scientists heard that many people are tired of the demands placed on the public and the agency by the current planning process. Many report that detailed analyses and seemingly endless meetings have resulted in planning documents deemed obsolete before their completion. Public concerns and events have sometimes overtaken the Forest Service's ability to respond. In an effort to avoid this in the future, the proposed rule provides a planning framework that facilitates the identification and responsive resolution to emerging problems such that plans ensure long-term sustainability and address evolving conditions.

Under the proposed rule, improvements to management practices would be made based upon cooperatively developed landscape goals and other topics of general interest or concern which can emerge from a variety of sources such as collaboration, monitoring, evaluation, broad-scale assessments, local analyses, new laws and policies, or simply from discussions among interested persons. The proposed planning process would provide for consideration of identified topics of general interest or concern, development of information as needed, and proposals for agency action when appropriate for resolution. Additionally, the proposed rule requires annually updated displays of proposed, authorized, and completed actions, and annually updated 2-year projections of anticipated outcomes, products, and services to provide realistic estimates based upon on-the-ground analyses.

Through this collaborative approach, and by providing interested publics with additional information regarding management direction, outcomes, and accomplishments for each management unit, the proposed planning process seeks to encourage the public's active involvement in forest planning. This approach is not only consistent with the direction provided in NFMA and other statutes guiding land and resource management, but is also in concert with the underlying philosophy of national forest management as reflected in guidance provided by Gifford Pinchot in the first Forest Service administrative manual, ''Uses of the National Forests'' (1907), in which he stated, ''National Forests are made for and owned by the people. They should also be managed by the people. * * * If National Forests are going to accomplish anything worthwhile the people must know all about them and must take a very active part in their management. What the people as a whole want will be done. To do it, it is necessary that the people carefully consider and plainly state just what they want and then take a very active part in seeing that they get it.''

Emphasis on Science in Planning

Another key element in the proposed planning process is renewed emphasis on the use of science in planning and the role of scientists in the decisionmaking process. The proposed rule requires use of the best available science to improve the ability of people, communities, and organizations to work together to develop mutual understandings about desired resource conditions and outcomes as well as to develop multiple-use management options that respond to public interests or concerns in the context of best available information and analysis.

The rule would incorporate science and scientists in the planning and decisionmaking process in a number of ways.

First, the rule recognizes the lessons learned in recent years in the development and analysis of scientific information as it affects natural resource management on a regional basis. The use of regional ecosystem assessment, as a basis for understanding the scientific, ecological, social, and economic issues affecting resource conditions and trends has proved extremely valuable as a means of generating baseline data for use in planning and decisionmaking.

In addition, as efforts continue to adopt the principle of adaptive management to guide natural resource stewardship, greater emphasis needs to be placed on evaluating resource conditions and monitoring trends over time. Consistent with the 1990 Critique as validated by the Committee of Scientists' report, the proposed rule emphasizes monitoring and evaluation so that management can be adapted as conditions change over time. This emphasis is in keeping with NFMA's direction to ensure research on evaluation of the effects of each management system, based on continuous monitoring and assessment in the field, to the end that it will not produce substantial and permanent impairment of the productivity of the land (16 U.S.C. 1604(g)(3)(C)). As noted by the Committee, ''Monitoring is a key component of planning * * *. Monitoring procedures need to be incorporated into planning procedures and should be designed to be part of the information used to inform decisions. Adaptive management and learning are not possible without effective monitoring of actual consequences from management activities.''

Finally, the proposed planning process provides for the establishment of science advisory boards to improve access for decisionmakers and planners to current scientific information and analysis. The role of these science boards, and of scientists in the planning process, in general, is emphasized by the following observation of the Committee of Scientists, ''To ensure public trust and support innovation, scientific and technical review processes need to become essential elements of management and stewardship. * * * The more that conservation strategies and management actions are based on scientific findings and analysis, the greater the need for an ongoing process to ensure that the most current and complete scientific and technical knowledge is used.''

Learning and Improving Planning

In summary, the proposed planning process provides for a continuous, collaborative approach to planning based upon best available scientific information and analysis and the concepts of ecological, social, and economic sustainability. This new and improved approach to planning is consistent with the statutory foundations for national forest and grassland management, experiences learned over the course of two decades of land and resource management planning under the NFMA, and the recommendations of the Committee of Scientists.

The proposed planning process is built upon the learning and innovation that has occurred and continues to occur among decisionmakers, scientists, and collaborators, as observed by the

Committee of Scientists. Thus, the proposed process is not a ''cookbook'' for making decisions, but a process that encourages learning and the evolution of new ideas that will improve the planning process over time.

Section-by-Section Description of the Proposed Rule

Purpose, Goals, and Principles

Proposed Section 219.1—Purpose.

This section describes the purpose of the proposed rule. The proposed rule would (1) describe the framework for National Forest System resource planning and decisionmaking; (2) encourage public participation and collaboration in resource management decisionmaking; (3) incorporate principles of sustainable resource management; and (4) establish requirements for implementing, amending, revising, monitoring, and evaluating land and resource management plans. Land and resource management plans for all units of the National Forest System have been developed under the existing rule. Therefore, the proposed rule focuses on planning procedures and the amendment and revision of the existing land and resource management plans.

Proposed Section 219.2—Goals and Principles for Planning.

This section of the proposed rule would establish five goals to be considered in land and resource management planning and decisionmaking. For each goal, this section sets out associated principles. The goals and principles for planning are those recommended by the Committee of Scientists, and emphasize the concepts of sustainable resource management, collaboration, and stewardship of the National Forest System and are intended to be statements of best planning practices.

The five goals of planning and management are, in the words of the Committee of Scientists, (1) to strive to assure the ecological sustainability of our watersheds, forests, and rangelands; (2) as part of the overall goal of sustainability, promote economic and social sustainability by providing for a wide variety of uses, values, products, services, and community benefits; (3) to recognize and efficiently integrate national forest and grassland management into the broader geographic, legal, political, and social landscape within which national forests and grasslands exist; and (4) to meaningfully engage the American people in the stewardship of their national forests and grasslands; and (5) to be at once visionary and pragmatic in guiding decisionmaking.

The Framework for Planning

Proposed Section 219.3—Overview.

Paragraph (a) of this section lays out the conceptual foundation of the proposed rule. Rather than viewing planning as an activity with a fixed beginning and ending, with rigid procedural steps and somewhat artificial analytical requirements, the proposed rule recognizes planning as a continuous, dynamic process that is driven by public interests or concerns about National Forest System resources or management, the results of monitoring and evaluation, or other new information. One of the underlying concepts is that now that the first round of plans are in place, the process should not focus on how to create new plans, but rather on how to improve upon the plans that are in effect. Thus, the proposed rule focuses on amending and revising plans and gathering better and more comprehensive information on which to base plan decisions. The key to gathering better information is through conducting broad-scale assessments and ensuring independent reviews and advice from scientists.

Another important conceptual difference between this proposed rule and the existing planning rule is the emphasis on collaborative planning. Under the proposed rule, the responsible official is expected to actively seek and encourage citizens, organizations, and governments to participate fully in identifying topics of general interest or concern that may require some action and to participate in deciding whether an interest or concern is ready to be addressed. This is a fundamentally different approach than that in the existing rule. The existing rule requires input from others less frequently and more formally than anticipated under the proposed rule.

Another significant addition to the planning process under this proposed rule is the integration of site-specific, project-level analysis and decisionmaking into the planning framework. The current planning rule is limited to forest planning at the programmatic level; no direction is given on planning, analyzing, and approving site-specific actions that apply the decisions adopted in plans or that achieve the desired conditions, goals, or objectives established in plans.

In addition, another significant change from the existing rule is the recognition that a meaningful forest or grassland plan cannot be bound between two covers, but must allow for the continuous changes anticipated by this proposed rule. Thus, the plan is a repository of the information and decisions required by the proposed rule.

Paragraph (b) describes the levels of planning at the national, regional, or national forest or grassland level depending on the nature and scope of topics of general interest or concern. This paragraph also establishes the Forest or Grassland Supervisor as the responsible official for the land and resource management plan. Under the existing rule, the Regional Forester is the responsible official for land and resource management plans. This proposed change in responsibility is based on the changing nature of the planning process. The existing rule was designed for the initial development of land and resource management plans and, because such plans had never been prepared, it was decided that the Regional Forester should be the responsible official. However, now that the first iteration of plans has been adopted, a revised planning rule should focus on the revision, amendment, and implementation of the existing land and resource management plans. The proposed rule would allow for one or more Regional Foresters or the Chief of the Forest Service to undertake planning which would amend simultaneously several relevant land and resource management plans for needs affecting a larger geographic area than that covered by a single national forest or grassland. Issues that might warrant such a regional approach include the recovery of an endangered species or regional forest health issues.

The proposed rule provides for linkage of various planning processes and levels. In the proposed rule, resource management plans would be related in substantive and meaningful ways to the long-term goals and objectives of the Forest Service to ensure progress toward those national-level goals and objectives. Proposed paragraph (b) would establish the context for land and resource management plans and the need for consideration of the Forest Service's national strategic, long-term goals, objectives, and outcome measures in resource management planning.

Proposed paragraph (c) identifies the key elements in land and resource management planning and the decisionmaking process: (1) Broad-scale assessments (§ 219.4(b)) and Cooperatively developed landscape goals (§ 219.12(b)); (2) Topics of general interest or concern; (3) Information development and interpretation; (4) Proposed actions; (5) Plan decisions that guide future actions; (6) Amendment; (7) Revision; (8) Monitoring and

evaluation; and (9) Site-specific decisions and authorized uses of land.

Proposed Section 219.4—Topics of General Interest or Concern

This section would establish a process for identifying, discussing, and, if appropriate, acting on topics of general interest or concern that may emerge from a variety of sources, such as the results of monitoring and evaluation, new information, collaboratively developed landscape goals, or discussions with those interested in National Forest System management.

Paragraph (a) describes topics of general interest or concern. These topics may originate from many sources. The existing rule refers to ''issues'' in a similar context; however, the Committee of Scientists viewed the word ''issue'' as having a negative connotation, referring to a problem that needs to be solved or something that required action. A topic of general interest or concern is a broader concept than an issue in that it includes any subject of interest or concern to any of the many partners and individuals interested in how the National Forest System is managed. A topic of general interest or concern may not require immediate action; it may simply spur discussion or the need for better understanding among the public and interested individuals.

To help determine when action on a topic of general interest or concern is needed rather than just discussion and better understanding, paragraph (b) includes several factors for the responsible official to consider. These factors include the level of public interest generated by the topic of interest or concern, the opportunities to contribute to ecological, social and economic sustainability by resolving the issue, the opportunities to improve ecological conditions or contribute to social or cultural values, the capability and resources to act, and other factors such as the potential for disproportionally high or adverse environmental effects on minority populations.

In the past, the agency often has been either too quick to act in initiating procedural requirements of NEPA to resolve potential problems or too slow. With regard to the former, acting too quickly without all of the information needed to properly define and resolve the issue, and without initially involving the public, has made issues more controversial and less clear, and resolutions harder to reach. The proposed rule would provide the agency with the framework and direction to move forward in addressing topics of interest or concern so that the public has confidence that the agency is taking appropriate action when and where it is needed.

Proposed Section 219.5—Information Development and Interpretation

This section describes information needed to further consider a topic of general interest or concern and provides direction on conducting broad-scale assessments and local analyses. When the responsible official determines that readily available scientific information is not adequate, a broad-scale assessment or local analysis should be conducted to obtain the needed information. The proposed rule makes clear that the findings and reports from assessments and analyses are not proposed actions or decisions subject to NEPA analyses and documentation.

Broad-scale assessments would be conducted to provide information specific to identified topics of general interest or concern with a broad geographic scale. Broad ecological boundaries or a broad social or economic community of interest would define the geographic scale. Agency personnel and other individuals and organizations that have knowledge or interest in the assessment area would collaboratively develop broad-scale assessments. These assessments would use the best available scientific information and analysis in describing the historic and current biological, physical, social, and economic conditions. The assessments would present findings and conclusions that describe the status and trends of ecological, social, and economic conditions and their relation to sustainability, and whether additional research is needed.

Section 219.5(a)(2) would establish a connection to nationwide Forest Service assessments, as they provide the context for broad-scale assessments. Nationwide Forest Service assessments and strategies provide a national portrait of the status and trends in supply, demand, and resource conditions for various natural resources on all forest and range lands within the United States and are useful in the preparation of broad-scale assessments. Other sources of information are also available to aid in the preparation of broad-scale assessments.

Local analyses are conducted at a geographic scale that is smaller than the area covered in a broad-scale assessment. A local analysis focuses on an aquatic or terrestrial ecological unit or a social or economic community that is appropriate for the type and complexity of the topic of general interest or concern under consideration. Local analyses use the best available scientific information and analysis, and may be used to collect additional information, such as inventory data or current conditions.

COMPARISON OF THE COMPONENTS OF BROAD-SCALE ASSESSMENTS AND LOCAL ANALYSES

Components	Broad-scale assessment	Local analysis
Purpose	Gathering and synthesizing existing information for identified issues.	Gathering existing information and/or collecting new information that is synthesized.
Who does it	Scientists and managers together. A Regional Forester and Research Station Director share the lead.	Forest Service managers with input from scientists.
Scale	Broad and appropriate to address identified issues. Usually greater than or equal to one or more plan areas.	Usually a watershed within a subpart of a plan area. May be a subpart of a broad-scale assessment area and often used for site-specific projects.
Information source	Usually existing information, including monitoring data.	Existing information and/or new inventory data.
Conclusion	Findings.	Recommendations.
Use	Development of proposed management direction, conservation strategies, policies, or programs.	Development of project proposals necessary to carry out decisions of a land and resource management plan.

Proposed Section 219.6—Proposed Actions

In this section, the concept of a proposal for Forest Service action is described. Under this proposed rule, the agency would not initiate the NEPA procedures until the agency has determined it is appropriate to propose an action based on the consideration of factors in § 219.4, available information and analyses (§ 219.5), and the ability to meaningfully evaluate the effects of one or more alternative actions. The intent here is to require more up-front thought when considering and framing proposals for action. Paragraph (b) explains that the responsible official may use the planning framework to accomplish the scoping process described in Forest Service NEPA procedures. This is a more inclusive, collaborative approach to scoping than the agency has used in the past, and would streamline the planning process.

Proposed Section 219.7—Plan Decisions That Guide Future Actions

This section describes the decisions that would be made through the planning process of the proposed rule. The existing rule does not precisely address the nature of land and resource management plan decisions and the appropriate scope of environmental analyses. Confusion over the nature of the decisions embodied in a land and resource management plan has been a principal source of controversy. Initially, many people believed land and resource management plans would lead to irretrievable resource commitments for all projects necessary to fully achieve the goals and objectives of the plan. It was often argued that land and resource management plans irretrievably committed the Forest Service to individual projects but failed to provide the analysis and documentation required by statutes such as NEPA.

Under the proposed rule, each land and resource management plan would include four categories of decisions that would guide future agency actions: (1) Desired conditions which describe the long-term sustainability sought over a period of time; (2) goals, objectives, standards, and guidelines applicable to all or a portion of the plan area; (3) identification and designation of suitable uses and designation of special areas; and (4) identification of required monitoring and evaluation. The environmental document accompanying an amendment or revision to a land and resource management plan, usually a broad statement (45 CFR Part 1502.20), would identify the scope of the federal action and associated environmental impacts. The environmental reviews of pending site-specific actions within a watershed could then tier to existing environmental documents to reduce unnecessary paperwork as described in NEPA procedures (45 CFR part 1500.4).

The proposed rule is significantly different from the existing rule with regard to the linking of different levels of planning. The proposed rule is responsive to the Committee of Scientists' report in terms of connections between planning levels and the roles of the National Assessment and the RPA Program, each required by the Forest and Rangeland Renewable Resources Planning Act of 1974. Sections 219.7(b)(1) and 219.9(d)(1) address how decisions made for land and resource management plans and decisions to change such plans would be linked to the Forest Service strategic plan goals and objectives (Table 1).

TABLE 1.—THE PLANNING AND DECISIONMAKING LEVELS OF THE EXISTING AND PROPOSED RULES

	Existing rule	Proposed rule
Levels of Information Collection and Interpretation.	National, Regional, and national forest and grassland—the scope of information set by administrative unit.	Broad-scale assessment—the scope and scale of information gathering is based on the scope and scale of information needs.
	Other information needs based on issues	Local Analysis—provides information for site-specific projects such as a timber sale or watershed improvement project and, if appropriate, ties to the findings of a broad-scale assessment.
Required Plans	Regional Guide—one per Region	No Regional Guide after 3 years—The direction for management would reside in the applicable LRMP.
	One land and resource management plan (LRMP) per national forest and grassland (units can be combined when under the jurisdiction of a Forest Supervisor).	Same.
Responsible Official	Regional Guide—Chief	Regional Guide—Eliminated.
	LRMP—Regional Forester for adoption, significant amendment and revision. Forest Supervisor for non-significant amendment.	LRMP—Forest Supervisor with authority for a higher-level official to amend or revise as needed.
Amendment	Large amendments (significant) similar to revision while less extensive amendments (non-significant) are possible for changes in the content of a plan.	Only one type of amendment. The scope of the change in the plan dictates the appropriate public review and necessary steps in agency NEPA procedures.
Revision	Start as if no plan existed and project high and low output and budget options.	Evaluate plan, provide for public review, and make appropriate changes to plan following agency NEPA procedures. All national forests and grasslands now have plans in effect.
Site-specific projects	Not addressed	The planning framework is used to guide project identification and authorization.

Section 219.7(b) describes the goals, objectives, standards, and guidelines which are applicable to all or a portion of the plan area. Goals link Forest Service policies, procedures, laws, Executive Orders, regulations and applicable Forest Service strategic plans with specific measurable objectives. Objectives describe measurable results intended to achieve one or more goals. Examples might include obliterating roads to improve watershed health or treating forested areas to reduce fuels and associated wild fire risks. Standards and guidelines describe the criteria

needed to achieve objectives and promote compliance with applicable laws and regulations. These would include, but are not limited to, the identification of focal species, standards and guidelines for management activities and land use, and preferred practices. This section includes the NFMA requirement (16 U.S.C. 1604(g)) that guidance be provided for timber harvest and regeneration methods, maximum harvest size openings, and techniques for achieving aesthetic objectives by blending the boundaries of vegetation treatments.

In the proposed rule, standards and guidelines are to be implemented according to the criteria they establish. Each provides criteria, within the authority of the Forest Service, on management activities within the plan area to ensure compliance with applicable laws and regulations or regulate management activities. Standards and guidelines may describe required or preferred or advisable courses of action. The specific requirement of each standard or guideline would dictate its specific application to an on-the-ground situation.

Paragraph (c) directs the responsible official to identify the suitability of lands for specific uses as described in § 219.26, including identification of the necessary transportation system and special areas such as research natural areas, geologic areas, reference landscapes, and botanical areas as described in § 219.27.

Proposed Section 219.8—Amendment

This section addresses amendments to land and resource management plans. The process for amendments would follow the planning framework (§§ 219.3 thorough 219.11) and agency NEPA procedures. While the proposed process for amendment is similar to that of the existing rule, amendments to land and resource management plans under the proposed rule would be based on the scope and scale of the issues selected for resolution from collaboration, new information, monitoring and evaluation, and appropriate broad-scale assessments and local analyses. For example, if a management strategy to protect a group of wide-ranging species is needed, several responsible officials for units of the National Forest System could combine their planning efforts to make broad-scale plan decisions through amendments to their land and resource management plans. These decisions would be further refined through on-the-ground analyses, site-specific projects, and monitoring and evaluation of actual results on each unit.

Proposed Section 219.9—Revision

The concept of revision under the existing rule in § 219.10(g) and § 219.12 would be substantially streamlined and improved by the proposed rule. Rather than being a zero-based event as envisioned in the existing rule, revision becomes a time for review in the planning framework (§§ 219.3 through 219.11). The responsible official would conduct a public review of the overall outcomes of a land and resource management plan to determine if corrections in the plan decisions or changes in management direction are needed. The findings from monitoring and evaluation, new data, new or revised policy, and changes in circumstances affecting the entire or large portion of the plan area would all be considered at the time of revision. The results of the review would be used to identify issues for further consideration in the planning process, and could lead the responsible official to proposing one or more changes to the plan decisions. Plans that have been actively amended consistent with the proposed rule may not require many changes at the time of revision. Also, at the time of revision the responsible official must adjust the next decade estimates of outcomes and outputs (§ 219.9(b)(6)).

Proposed Section 219.10—Site-Specific Decisions and Authorized Uses of Land

In paragraph (a), the responsible official is directed to conduct planning within the framework described in §§ 219.3 through 219.11 to make site-specific project decisions. This is a significant shift from the approach of the existing rule, which is limited to the preparation of forest plans. Under the proposed rule, the same basic steps and requirements apply to land and resource management planning as to planning for a site-specific project. The only differences between the decisions embodied within a land and resource management plan and those related to a site-specific project plan are the scope, breadth, specificity, and commitment of resources.

As in the existing rule, this proposed paragraph requires the decision to select a site-specific project to be consistent with decisions in the applicable land and resource management plan. If a proposed action were found to be not consistent with the land and resource management plan, the responsible official, subject to valid existing rights, would have several options: modify the proposal to make it consistent with the direction in the land and resource management plan; reject the proposal; or amend the land and resource management plan so that the proposed site-specific project is consistent.

Paragraph (b) of § 219.10 implements the NFMA requirement that permits, contracts, or other authorizing instruments must be consistent with the management direction in the applicable land and resource management plan. This proposal seeks to remedy some of the confusion and inconsistent interpretation that has occurred under the existing planning rule. The proposed rule clearly requires that an authorization for occupancy and use be consistent with the plan at the time of its issuance. This policy is well established and understood. The more difficult matter is what to do with permits, etc. when plans are amended or revised. The proposed rule makes clear the options available to the responsible official. First, the responsible official must consider the effect of an amendment or revision on ongoing permits and contracts, etc. Ongoing activities or uses may be exempt from provisions of a plan amendment or revision. Second, the responsible official can require changes in the authorized use, subject to valid existing rights and applicable statutes, to make the activity consistent with the plan. Or, the amendment or revision can exempt the authorization from conformance with the new amendment or revision. However, the proposed rule provides a safeguard or condition regarding waivers; namely that consistency cannot be waived if the authorized use would prevent achievement of the desired condition of the plan area. The proposed rule also provides that should an authorized use not be exempted from application of a new plan amendment or revision, the decision document must include a schedule for compliance.

Proposed Section 219.11—Monitoring and Evaluation

While monitoring and evaluation are addressed in the existing rule, the emphasis has been on developing and amending plans. Attention to monitoring and evaluation has been sporadic or inconsistent. For planning to provide for adaptive management and achieve the desired conditions that the public supports, monitoring and evaluation must receive careful attention.

Paragraph (a) of proposed § 219.11 would require land and resource management plans to establish monitoring requirements. At a minimum, this would require that plans identify the actions, effects, resources to be measured; the frequency of measurement; the method of

monitoring; and the appropriate reporting intervals. Under the proposed rule, monitoring and evaluation would be used to determine if actions are being implemented in accordance with applicable plan direction; if the aggregated outcomes and effects of actions are sustainable and are achieving desired conditions; and if key assumptions underlying management direction are valid.

Paragraph (b) would require the responsible official to provide opportunities for the involvement of others in monitoring and evaluation, and actively promote and seek stronger coordination with other federal agencies, state, local, and tribal governments; scientific and academic communities; and other interested parties.

Paragraph (c) addresses monitoring at the site-specific project level. This paragraph would require that when monitoring and evaluation are required in conjunction with a site-specific project, the monitoring requirements must be identified in the project decision document. Moreover, in such a case, subject to valid existing rights and other statutory requirements, the project could not be initiated, unless there is a reasonable expectation that adequate funding will be available to complete the required monitoring and evaluation.

Paragraph (d) would require the development of an annual monitoring and evaluation report. The report would become part of the land and resource management plan. It would include the following: a list of required monitoring; a summary of the results of monitoring performed during the previous fiscal year; a description of achievement toward desired conditions and sustainability as identified in the land and resource management plan; identification of any new topics of general interest or concern arising from monitoring and evaluation; a list of amendments made to the plan in the previous year; and a summary of outputs, outcomes, and budgetary trends related to the achievement of desired conditions.

Paragraphs (e) and (f) would describe the specific monitoring and evaluation requirements necessary for assessing achievement of ecological, social, and economic sustainability which is described in §§ 219.19 through 219.21.

Collaborative Planning for Sustainability

Proposed Section 219.12—Collaboration and Cooperatively Developed Landscape Goals

Paragraph (a) describes the collaborative relationships of land and resource management planning that enhances the ability of people to work together, build their capacity for stewardship, and achieve ecological, economic, and social sustainability. The responsible official, functioning as a leader, convener, facilitator, or participant, as appropriate, should foster positive relationships with people interested in and/or affected by the management of the National Forest System lands, as well as with other federal agencies and state, local, and tribal governments that wish to participate in defining the future of the National Forest System. The responsible official should provide opportunities for early, open, and frequent meaningful participation in planning.

Traditionally, the relationship between the national forests and grasslands and the broader society was primarily viewed as a one-way street—goods flowed from federal lands to numerous beneficiaries and public servants made choices based on their best judgments about what was best for society. To achieve long-term sustainability, the relationship between the public and the agency in managing these forests must be a two-way relationship. The existing rule and planning process has the Forest Service positioned as an arbiter in the middle of the conflict. The proposed rule recognizes that the responsible official may play several roles, such as convener, facilitator, leader, or participant, in achieving collaboration and understanding regarding conditions and needed actions or outcomes. The current planning process is designed to solicit input and then criticism from non-agency groups and individuals. It does not create a process for constructive dialogue leading to the resolution of problems. The proposed rule calls for collaboration in resolving issues of mutual concern in a manner that best fits the needs of the people concerned, the place, and the issues at hand.

The Committee of Scientists stated that the planning process should provide for recognizing, enhancing, and capitalizing upon the capacity of interested and affected people to engage in stewardship activities and the achievement of sustainability.

Building stewardship capacity to enhance achievement of sustainability is grounded on the following eight core elements:

(1) *Trust.* For the planning process to be trusted, planning must be perceived to be legitimate, credible, and fair to the diverse groups, individuals, and communities who care about national forests and grasslands. To achieve legitimacy, planning must be sanctioned by administrative procedures, have the support and commitment of agency officials, and recognize other rights and authorities. Planning, to be credible, must have a sound and complete base of knowledge to inform decisionmaking. To be fair, planning must be inclusive and representative, with mutually agreeable criteria for decisionmaking and equal access to information.

(2) *Collaborative relationships.* To effectively pursue sustainability, planners and managers must engage those who:

(i) have information, knowledge, and expertise to contribute to developing courses of action;

(ii) have sole control or authority over lands and activities adjacent to national forests and grasslands:

(iii) have the skills, energy, time, and resources to carry out stewardship activities;

(iv) can help monitor and assess on-the-ground consequences of management actions to better inform future decisions; and

(v) can independently validate the credibility of stewardship decisions and the reality of achievements.

(3) *Understanding.* To achieve effective stewardship, the planners and managers must build broad-based understanding and engage those who can provide a voice for the interests that must be recognized and understood. Planning must provide opportunities and incentives for people to come together and strengthen a community's ability to chart and pursue a common future course and to be able to assist in the pursuit of sustainability for public lands.

(4) *Joint fact finding.* When planning and assessment processes are viewed as joint-inquiry processes between the agency and the public, then the attitudes of both are aimed toward mutual learning, issue identification, and problem solving, thereby enhancing the ability of the process to promote effective stewardship.

(5) *Dealing with conflict.* Planners and managers must recognize the inevitability of legitimate, yet competing, values in National Forest System management and must encourage divergent interests to collectively deal with their differences

while pursuing shared goals for the national forests and grasslands.

(6) *Capabilities.* Planners and managers must ensure that the Forest Service takes an active role in considering the types of communities and business capabilities necessary for effective stewardship. In addition, the planning process should foster the development and awareness of the relationship of local entrepreneurship and the capability to treat vegetation, restore watersheds, and other tasks necessary to achieve sustainability.

(7) *Will.* By providing encouragement, flexibility, support, resources, skills, training, and rewards, planners and managers should provide a supportive agency environment to build the internal stewardship capacity needed to achieve sustainability.

(8) *A learning organization.* The internal capacity for stewardship within the Forest Service is effectively established within an organization that promotes learning and appropriate change in behavior. The planners and mangers should foster appropriate change in organizational behavior and promote the development of several key indicators of a learning organization. These indicators of a learning organization include, but are not limited to, the following:

(i) A recognized need for learning and action to achieve it;

(ii) Learning from results and modifying successive steps accordingly;

(iii) Team approaches that bridge skills, expertise, and interests and provide helping hands with shared ideas and responsibilities;

(iv) Flexibility that prompts creativity and innovation;

(v) Learning from what did or did not work;

(vi) Use of constructive feedback loops and mechanisms for external reviews; and

(vii) Champions who provide leadership and enthusiasm for the learning process. Paragraph (b) provides direction that the responsible official, using information from available broad-scale assessments or other available information, should seek to join in or initiate collaborative efforts to develop or propose landscape goals for ecological units. In addition, responsible officials, managers, and planners should strive to communicate and foster understanding of the nation's declaration of environmental policy expressed, in part, by section 101(b) of NEPA. The national declaration of environmental policy provides a common focus from which people of potentially differing views can consider mutually beneficial goals within their areas of interest. The establishment of collaboratively developed landscape goals among interests may identify a topic of general interest or concern which could lead to proposals for action by the Forest Service or others.

Proposed Section 219.13—Coordination Among Federal Agencies

This section addresses the special relationship the responsible official must develop with other federal agencies in recognition of the fact that many issues affecting the national forests and grasslands can only be resolved through the collaborative efforts of federal agencies. Under the proposed rule, responsible officials must provide opportunities for other agencies to participate in identification of topics of general interest or concern and the formulation of proposed actions, and resolution of inconsistencies among policies, plans, or programs. To further solidify the cooperative effort among federal agencies, the responsible official is urged to develop joint plans where appropriate and practicable.

Proposed Section 219.14—Involvement of State and Local Governments

This section addresses the special relationship the responsible official must develop with state and local governments. Much has been accomplished during the first round of planning, but better interaction with state and local governments is needed. The proposed rule provides for more involvement. Under the proposed rule, the responsible official must provide opportunities for early involvement of state and local governments in the discussion and resolution of issues related to land and resource management planning. The responsible official is called upon to recognize the unique jurisdiction, expertise, and role these governments play on lands both affected by and affecting the national forests and grasslands.

Proposed Section 219.15—Interaction With American Indian Tribes and Alaska Natives

This section requires the responsible official to recognize the government-to-government relationship that the Forest Service has with American Indian tribes and Alaska Natives. It requires the early identification of treaty rights, treaty protected resources, and other tribal concerns during the planning process. Responsible officials must invite American Indian tribes and Alaska Natives to participate throughout the planning process and consider tribal data and resource knowledge provided by tribal and village representatives in the planning process.

Proposed Section 219.16—Relationships With Interested Individuals and Organizations

A central function of the planning process is to facilitate community building by providing the opportunity and incentives for people to come together. This section acknowledges both communities of place and interest. One goal of land and resource management planning is to enhance the capacity of diverse communities and people to work together and work with the agency, and in so doing, facilitate their ability to constructively contribute to national forest and grassland management.

Collaboration with scientific experts and knowledgeable persons is emphasized as a way to bring the best available scientific and other information into the planning and decisionmaking process. Finally, this paragraph requires the responsible official to collaborate with a broad spectrum of individuals and entities to gain information about current and past public uses of the assessment area.

Proposed Section 219.17—Interaction With Private Landowners

This section highlights the need for the Forest Service to be a good neighbor and to consider the overall context in which the national forests and grasslands exist. Nothing in this section should be interpreted as any desire to infringe upon or limit private property rights. Rather, this section would direct the responsible official to consider the pattern and distribution of land ownership in the plan area and to consider the conditions and activities on adjacent lands in evaluating the cumulative effects of management decisions. It would also direct the responsible official to actively seek the involvement of individuals who control or have authority over lands near or adjacent to national forests and grasslands.

Proposed Section 219.18—Role of Advisory Groups and Committees

This section of the proposed rule describes the formal and informal role of advisory groups. Paragraph (b) describes the use of advisory committees to assist the responsible official in determining whether there is a reasonable basis for proposing an action to address a topic of general interest or concern. Each Forest or Grassland Supervisor would be required to have access to an advisory committee that can address local conditions and

topics of general interest or concern. The committees would consist of a diverse cross-section of knowledgeable persons interested in the planning for and management of National Forest System lands.

Ecological, Social, and Economic Sustainability

Proposed Section 219.19—Ecological, Social, and Economic Sustainability

This section would confirm ecological, social and economic sustainability as the foundation for National Forest System management. The first priority for management is the maintenance and restoration of ecological sustainability which is consistent with laws guiding use and enjoyment of National Forest System lands. These laws clearly proclaim a national policy to provide for sustainability of these lands in perpetuity. The MUSYA directs the Secretary of Agriculture to develop and administer the renewable surface resources of the National Forest System for multiple-use and sustained-yield of the several products and services obtained there from (16 U.S.C. 528, 529). The NFMA affirms this statutory policy by directing the Secretary, among other things, to assure that the development and administration of the renewable resources of the National Forest System are in full accord with the concepts for multiple-use and sustained-yield of products and services as set forth in the MUSYA (16 U.S.C. 1600, 1607).

In developing and maintaining land and resource management plans for units of the National Forest System, NFMA mandates use of a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic and other sciences (16 U.S.C. 1604(b)). Moreover, NFMA requires consideration of the economic and environmental aspects of various systems of renewable resource management to provide for multiple-use and sustained-yield of the National Forest System products and services. In fulfilling the policies articulated by the Congress, it is paramount that the units of the National Forest System sustain their capacity for renewal to continue their ability to provide for various multiple-use benefits.

Proposed Section 219.20—Ecological Sustainability

This section of the proposed rule would establish that it is necessary to maintain and restore ecological integrity to achieve ecological sustainability. Sustaining the integrity of ecological systems increases their resistance to natural disturbance events, allows for renewal following use or degradation, and preserves options for future generations.

The concept of managing the national forests and grasslands in an ecologically sustainable manner can be traced back over 100 years. As early as 1897, the Congress directed that national forests would be established to improve and protect the forests * * * or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber * * * (16 U.S.C. 473–82 & 551). To carry out this mission, Congress vested the Secretary of Agriculture with broad authority to make rules needed to regulate occupancy and use of national forests and to preserve the forests therein from destruction (16 U.S.C. 551).

In 1960, Congress enacted the MUSYA, which expressly directs the Forest Service to manage the national forests and grasslands for multiple uses under the balance the agency deems will best meet the needs of the American people and make the most judicious use of the forest resources under its jurisdiction (16 U.S.C. 528–531). In MUSYA Congress declared that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes (16 U.S.C. 528). The Act calls for the harmonious and coordinated management of the various resources * * * without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or greatest unit output (16 U.S.C. 532(a)).

In the late 1960's and 1970's, Congress enacted several statutes applicable to all federal agencies which significantly expanded public participation in federal decisionmaking and provided procedures for consideration and disclosure of the effects of Federal actions upon the environment. The enactment of these environmental laws has greatly influenced the process of National Forest System management. These laws augment the multiple-use, sustained-yield mandate and reinforce ecological sustainability as the first priority of National Forest System management. Examples of these statutes include: the National Environmental Policy Act (wherein Congress: (1) declared a national policy to promote efforts which will prevent or eliminate damage to the environment and biosphere and * * * enrich the understanding of ecological systems and natural resources important to the Nation; (2) recognized the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man; and (3) directed the Federal Government, among other things, to use all practicable means to attain the widest range of beneficial uses of the environment without degradation * * * (42 U.S.C. 4321,4331); the Endangered Species Act which provides a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved (16 U.S.C. 1531(b)); the Clean air Act which seeks to protect and enhance the quality of the Nation's air resources, with a primary goal of promoting reasonable federal, state and local government actions * * * for pollution prevention (42 U.S.C. 7401); and the Clean Water Act the objective of which is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters (33 U.S.C. 1251).

In 1976, Congress enacted the NFMA, continuing the long line of statutory direction to provide for ecological sustainability in the management of the national forests and grasslands. The Committee of Scientists and the agency believe NFMA's direction to provide species diversity and maintain ecological productivity is consistent with the concept of ecological sustainability (Committee of Scientists' report, p. xvi). Senator Humphrey described NFMA as: ''an Act designed to build our forests as a bulwark of renewable resources. It is a full storehouse, providing a perpetual high yield of multiple-use benefits. It is a managed system of forest and rangeland with the water, wildlife, soil, and beauty maintained. This is an Act that assures that our public forests are managed with advice from the several publics, and managed in a framework that makes ecological and environmental sense'' (Compilation of the Forest and Rangeland Renewable Resources Planning Act of 1974 (as amended) August 20, 1979, Committee on Agriculture, Nutrition and Forestry, p. 768).

In NFMA, the Congress directed promulgation of regulations that specify forest planning guidelines that ensure consideration of the economic as well as environmental aspects of various systems of renewable resource management, including the related systems of silviculture and protection of forest resources * * * for multiple use management (16 U.S.C. 1604(g)(3)(A)). Similarly, the regulatory guidelines for planning are to provide for diversity of plant and animal communities based on

the suitability and capability of the specific land area in order to meet overall multiple-use objectives * * * (16 U.S.C. 1604(g)(3)(B)).

In sum, the first priority for management, to achieve sustainability through the maintenance or restoration of ecological integrity of national forests and grasslands, affirms Congressional direction. Perhaps Judge Dwyer said it best in his opinion reviewing a challenge to Forest Service efforts to conduct inter-agency, ecosystem-based planning associated with the Northern Spotted Owl: ''Given the current condition of the forests, there is no way the agencies could comply with the environmental laws without planning on an ecosystem basis'' (Seattle Audubon Society v. Lyons, 871 F. Supp. 1291 (W.D. Wash. 1994) aff'd 80 F.3d 1401 (9th Cir. 1996)).

Ecosystem integrity, defined in § 219.36, refers to the completeness of an ecosystem that, at multiple geographic and temporal scales, maintains its characteristic diversity of biological and physical components, spatial patterns, structure, and functional processes within its approximate range of historic variability. These processes include disturbance regimes, nutrient cycling; hydrologic functions, vegetation succession, and species adaptation and evolution. Ecosystems with integrity are resilient and capable of self-renewal in the presence of the cumulative effects of human and natural disturbances.

Section 219.20 would provide a more explicit, comprehensive, and ecologically integrated framework for ecological sustainability than the existing regulation. The existing rule entails program-specific direction for different resources, such as soil and water, wildlife and fish, and so on. Under the existing rule, the NFMA requirement to provide for the diversity of plant and animal communities is met primarily through the requirement to provide habitat to maintain viable populations of native and desired non-native vertebrate species. To achieve ecological sustainability it is necessary to maintain and restore ecosystem integrity. The proposed rule would add an ecological systems approach that focuses on ecosystem integrity to complement the existing focus on species viability in assessment and management.

Paragraph (a) describes information necessary to assess ecological sustainability. Maintaining ecological integrity provides for resiliency to environmental change and disturbance occurring within the historical range of natural variability. The species component requires the maintenance of ecological conditions necessary to provide for a high likelihood of maintaining species viability over time in the plan area. Together, these approaches are presumed to address and sustain ecosystem productivity as required in the MUSYA and provide for the diversity of plant and animal communities as required in NFMA (16 U.S.C. 1604(g)(3)(B)).

This section incorporates the key principles and desired outcomes for ecological sustainability that were outlined in the Committee of Scientists' report. The Committee acknowledged that providing for sustainability of ecological systems on national forests and grasslands is an imprecise process with many unknowns and potential pitfalls that are not under the control of resource managers. Therefore, this section of the regulation would:

- Acknowledge the dynamic nature of ecological systems (§ 219.20(a)). Maintaining composition, structure, and processes within the expected bounds of variation is proposed as an approach to sustain ecological diversity and productivity for future generations (§ 219.20(b)(1), (2), and (3)).
- Acknowledge the uncertainty and inherent variability of ecological systems (§§ 219.20(a)(10) and 219.20(b)(1)). Uncertainty and variability are acknowledged in decisionmaking, monitoring and adaptive management so change is incorporated into the dynamics of stewardship.
- Acknowledge the significance of natural processes (§ 219.20(b)(3)) by requiring responsible officials to make decisions that provide for ecosystem integrity at appropriate planning levels.
- Acknowledge cumulative effects (§ 219.20(a)(8)).
- Preserve options as a way of explicitly acknowledging our incomplete knowledge of complex ecological systems (§ 219.20(b)(4)).
- Conserve habitat for native species (§ 219.20(b)(8)) and productivity of ecological systems in order to maintain ecological sustainability. The productivity of an ecosystem can be sustained over the long term only if species that provide the appropriate structure and function for the system are maintained.
- Recognize the special role that national forests and grasslands play in regional landscapes (§ 219.20(b)(10)).
- Analyze issues at the appropriate scale (§ 219.20(a)).

Three major components are included in this section. The first is paragraph (a), ecological information and analysis, which outlines the underlying information needed to support and develop scientifically sound management approaches to ecological sustainability. The second paragraph, management decisions, identifies specific components and actions that direct management activities to meet the objective of ecological sustainability. Monitoring is the third paragraph (§ 219.20(c)). It outlines a framework to assess the effectiveness of management action in maintaining or restoring ecosystem integrity.

Sections 219.20(a) describes the ecological information and analysis that would be needed to support the goal of ecological sustainability. This includes the information necessary to characterize the current biological and physical environment (§ 219.20(a)(1)) and principle ecological processes (§ 219.20(a)(2)) within the planning area and is similar in some respects to the analysis of the management situation in the current regulations.

The concept of the historical range of variability (§ 219.20(a)(4)) is used as an ecological context to assess ecosystem integrity. The historic range of variability describes the limits of change in composition, structure, and processes of the biological and physical components of an ecosystem resulting from variations in the frequency, magnitude, and patterns of natural and human disturbance and ecological processes characteristic of an area before European settlement. Measures of the historical range of variability could include the forest types and the proportion of successional stages represented in an area, the size and return intervals of stand replacing fires, or the variability in instream flows and associated periodicity and effects of major flood events. The effects of pre-Europeans are considered as factors when estimating the historical range of variability and human disturbance. The effects of post-European settlement activity are also described. Historical pre-European settlement conditions are compared to current conditions to estimate the degree of ecosystem integrity. Ecosystems whose current range of variability, through space and time, approximates the historical range are considered to have high integrity and to be in a sustainable condition since biotic components had theoretically adapted to ecological conditions occurring within that range.

Focal species (§ 219.20(a)(7)(i)) would be identified and used as surrogate measures in assessing ecological integrity, including the diversity of native and desirable non-native species, in evaluating differences in effects between alternatives, and in monitoring

and assessing the effects of management activities on ecological sustainability. Focal species are expected to convey information about the status of the larger ecological system in which they reside or about the integrity of specific ecosystem components or processes. Focal species would include those which play key roles in maintaining community structure or processes, serve an umbrella function in terms of encompassing habitats needed for many other species, or whose population status and habitat relationships serve to convey information about the status and integrity of the larger ecosystem in which they occur. These species could be used to evaluate conditions needed to provide for the viability of other species and in monitoring the effectiveness of plan decisions for maintaining or restoring ecosystem integrity.

Focal species should not be confused with the concept of ''management indicator species'' under the existing rule. The existing rule uses population trends of management indicator species to evaluate the effects of management activities and indicate the status of other species with similar habitat needs. The concept of management indicator species has been the subject of substantial criticism and would not be adopted in the proposed regulation.

Procedures will be developed for evaluating species viability (§ 219.20(a)(7)(i)) under current and proposed strategies on all lands in the assessment area. These analyses will highlight risks to species viability, document cumulative effects, and identify ecological conditions needed to maintain species viability over time.

Additional indicators of ecosystem integrity (§ 219.20(a)(7)(iii)) would be identified, such as air quality, water quality, soil quality, fire and water flow regimes, plant growth and the variety and distribution of forest and grasslands. Ecosystem integrity (§ 219.20(a)(7)(ii)) will be evaluated using measures of species viability and the condition of other indicators under current and proposed management strategies on all lands within the assessment area. These measures and indicators may be valuable in providing feedback within a shorter timeframe than that needed to determine status and trend of populations.

In addition to focal species, species at risk would be identified as indicators of ecological integrity. Species at risk (§ 219.20(a)(8)(ii)) are those species for which viability is a concern, including endangered, threatened, proposed, and candidate species as described by the Endangered Species Act as well as species for which there is a viability concern throughout the species' range, or species for which there are concerns about distribution in the plan area.

In addition to the above indicators of ecological integrity, demand species will be identified and their status evaluated. Demand species (§ 219.20(a)(9)) are plant and animal species with high social, cultural, or economic values.

Proposed section 219.20(b) requires the responsible official to make decisions that provide for maintenance and restoration of ecosystem integrity, including species viability, at the appropriate planning level. Decisions made at subsequent levels would have to be consistent with decisions at higher levels. Decisions should either maintain conditions within the historical range of variability or provide for restoration toward conditions within that range. The intent is to manage for the historical range of conditions of key ecological attributes across the landscape rather than for a single point within that range such as the upper or lower extreme.

The proposed regulation would clearly articulate expectations relative to maintaining species viability (§ 219.20(b)(8)). Decisions, at the appropriate levels of planning, would provide ecological conditions such that there is high likelihood of maintaining species viability over time. The proposed regulation clarifies the requirement of maintaining well-distributed and interacting populations and clarifies the objective for viability given different patterns of overlap between species range and the planning area. The proposed regulation also clarifies that rigor in the analysis of viability should be commensurate with the level of knowledge available about a species, including its demographic and genetic characteristics (§ 219.20(a)(8)(i)).

The concept of ecological conditions (§ 219.20(b)(8)) is used to denote a broad array of factors that can affect species persistence and viability. The current regulation requires that fish and wildlife habitat shall be managed to support viable populations of native and desired non-native vertebrate species in the planning area. The proposed rule provides the concept that habitat includes an array of ecological conditions that are under control of management and that may influence species viability (§ 219.20(b)(8)(i)). These may include roads, conditions that contribute to spread of invasive species, and human uses as factors that must be managed to provide species viability.

The proposed rule implements the NFMA requirement to provide for the diversity of plant and animal communities by expressly defining species to include any taxon of the plant or animal kingdom (§ 219.36). The existing rule only requires that viable populations of vertebrate fish and wildlife be maintained. Furthermore, in an attempt to more effectively meet the agency's commitment to avoid actions that would contribute to the need to list species under the Endangered Species Act, the definition of species and level of biological organization for which viability is assessed and managed is intended to match the listable entities concept used by the Departments of the Interior and Commerce in execution of their Endangered Species Act requirements to include the concept of subspecies, distinct population segments, and significant evolutionary units. Objectives, standards, and guidelines would include measures such that Forest Service actions, within conditions or events under its control, would not contribute to the need to list species (§ 219.20(b)(10)).

The proposed rule would maintain the current cooperative relationship with state fish and wildlife agencies (§ 219.20(b)(11)). The Forest Service role has traditionally been to address habitat rather than population management and to work cooperatively with states to resolve issues involving fish and wildlife management. States generally exercise jurisdiction over hunting and fishing on National Forest System lands. Objectives for sustainable use levels of demand species would be jointly developed with states, American Indians, and Alaska Natives (§ 219.20(b)(11)). Management decisions must provide the ecological conditions needed to achieve these sustainable use levels.

Proposed § 219.11(e) and § 219.20(c) require the implementation of a monitoring strategy that would provide an evaluation of the effectiveness of management decisions toward achieving ecological sustainability. The existing rule only requires monitoring population trends of management indicator species. The proposed rule includes a comprehensive monitoring approach that requires monitoring for focal species, species at risk, demand species and selected indicators of ecosystem integrity and incorporates an adaptive management framework.

Expectations for monitoring of focal species and species at risk (§ 219.11(e)(2)) would be described to permit varying levels of intensity and differing methodology, depending on several factors. Most importantly, where

risks to species viability are high or there is great uncertainty about ecological conditions needed for viability, monitoring requires actual estimates of population trends and status through efficient population sampling or habitat relationships studies. It would provide the opportunity to estimate population status and trend using scientifically credible species-habitat relationships based on empirical data collected through time under the monitoring program. A broader array of methodology, including a variety of population indices or presence/absence information, may be used to assess population status where ecological risks to species are lower.

Where risks to species are lower or there are well-established relationships between population status and habitat conditions, habitat monitoring alone may be used to infer species status. Habitat conditions and trends would be monitored for all focal species and species at risk.

The monitoring program would develop methods for measuring all selected indicators of ecosystem integrity and designate critical values that would trigger reviews or possible amendments to management direction (§ 219.11(e)(3)). This is the essence of adaptive management.

The conceptual models that focal species and other selected ecological indicators serve to indicate the status and integrity of the ecological system to which they belong must be validated (§ 219.11(e)(4)).

Proposed Section 219.21—Social and Economic Sustainability

Prosperous communities and economies may remain healthy and vibrant if their foundation is ecologically sustainable. Although the Forest Service cannot solely sustain existing communities, the National Forest System lands nonetheless contribute many values, services, outputs, and uses that help enable economies and communities to persist, prosper, and evolve. This section details a process for developing comprehensive understanding of sustainable social and economic environments.

Paragraph (a) describes the role of national forests and grasslands in promoting social and economic sustainability. The management of National Forest System lands promotes economic and social sustainability through involvement of interested and/or affected people, development and consideration of relevant social and economic information, and by providing a range of products, services, and values.

Paragraph (b) describes that social and economic analyses are important in gaining understanding of the relationships among ecological, social, and economic sustainability. Social analyses address human life-styles, attitudes, beliefs, values, demographic characteristics, and land-use patterns of human communities and their capacity to adapt to changing conditions. Economic analyses identify and evaluate an area's economy. The responsible official, in conducting broad-scale assessments or local analyses, should consider the best available information to consider a variety of social and economic factors.

Paragraph (c) describes an appropriate social analysis that may rely upon quantitative, qualitative, and participatory methods for gathering and analyzing data. Social analyses are often undertaken at varying spatial scales to improve understanding and the description of the potential consequences to communities and regions from changes in land management. Social analyses may include a regional analysis, a risk and vulnerability analysis, or other appropriate analyses.

Paragraphs (d) and (e) describe economic analyses and local social and economic analysis that provide information and may include a quantitative, qualitative, and historical analysis of the effects of National Forest System management on national, regional, and local economies. Local analyses should provide refinement of larger-scale analyses and of regional data and information as related to the area under consideration. A local analysis may also provide a context for other analyses and prove useful in evaluating a proposed action or monitoring results.

Paragraph (f) would require that analyses and decisions regarding social and economic sustainability are to be made at the appropriate planning level, and that decisions made at subsequent levels must be consistent with higher-level decisions.

Monitoring of social and economic effects is addressed in § 219.11(f). Monitoring and evaluation of social and economic sustainability should include periodic review of national, regional, and local supply and demand for products, services, and values. Special consideration should be given to those products, services, and values that the Forest Service is uniquely poised to provide. Monitoring should improve the understanding of the National Forest System contributions to human wants and values and to social and economic sustainability.

The Contribution of Science

Proposed Section 219.22—The Role of Assessments, Analyses, and Monitoring

This section describes the proposed role of broad-scale assessments, local analyses, and monitoring and evaluation efforts. Scientists from within and outside the agency would be involved in broad-scale assessments to help identify, integrate, and evaluate the best available scientific and other information. Scientists would be involved in the design, evaluation, and peer review of monitoring and inventory strategies and protocols.

Proposed Section 219.23—The Participation of Scientists in Planning

This section describes the participation of scientists in planning. Like the existing rule, the proposed rule would require the use of the best available scientific information in the formulation of land and resource management. The proposed rule adds the term ''and analysis'' to ''best available scientific information.'' The proposed addition is deemed to be an equivalent concept to the existing rule within the meaning of its application in the planning process. However, unlike the existing rule that is ambiguous about the use of scientists in the planning process, the proposed rule describes the critical role science and scientists will play in nearly every stage of the land and resource management planning. Scientists will be involved in helping to identify new issues and translate new information about the conditions of forests and grasslands; conducting appropriate broad-scale assessments and local analyses; and in helping managers and the public formulate potential solutions to issues by analyzing management options. The proposed rule provides for an independent scientific review of the effectiveness of land management plans in meeting the goal of ecological sustainability during the revision process. The proposed rule also provides for the establishment of a National Science Advisory Board and access for each national forest and grassland region to a science advisory board. The science advisory boards would provide science consistency evaluations when necessary to determine whether the planning process is consistent with the best available science; and when appropriate and practicable, independent scientific peer reviews of the findings and conclusions originating from a broad-scale assessment.

Proposed Section 219.24—Science Consistency Evaluations

This section would allow for the scientific review of planning processes to ensure consistency in the application and interpretation of the best available scientific information and analysis.

Proposed Section 219.25—Science Advisory Boards

This section would provide for the establishment of science advisory boards, which provide scientific advice to the responsible official. Board membership would include scientists representing a broad range of disciplines.

Special Considerations

These sections provide direction to fulfill statutory planning requirements that affect the management and use of National Forest System lands, including timber harvest, livestock grazing, oil and gas leasing, recreation and other uses.

Proposed Section 219.26—Identifying and Designating Suitable Uses

This section would provide that during amendment or revision of a land and resource management plan the suitability of various uses would be determined within the planning framework.

The suitability of various uses is determined, as appropriate, within the proposed planning framework (§§ 219.3 through 219.11) and includes plan decisions related to uses that would be permitted within specific areas. It is anticipated that the suitability of uses will be the subject of considerable debate. Suitability identifications would be applied to areas that are large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions. The proposed planning process would include broad-scale assessments, local analyses, or other analytical methods that facilitate collaboration with the public to identify lands that are suitable for certain management practices such as recreation, timber production, livestock grazing, mineral development, or other uses.

Proposed Section 219.27—Special Designations

The existing rule specified only two special designations, wilderness and research natural areas. The proposed rule would expand special designations to include but not be limited to: wilderness; research natural areas; geological areas; reference areas; scenic by-ways; unroaded areas; roadless areas; national scenic areas; national recreational areas; national natural landmarks; and wild, scenic, and recreation rivers.

The purpose of this change is to ensure that land and resource management plans include all the relevant direction for lands within the plan area, including those with special designations which may have been evaluated through other planning processes as required by statute. The proposed rule seeks to integrate direction for all specially designated areas into land and resource management plans to the extent possible.

This section further proposes that amendment or revision of a land and resource management plan is the mechanism by which the Forest Service establishes management direction for such special designations.

Paragraph (a) states that, unless otherwise directed, all undeveloped roadless areas must be evaluated for wilderness designation at the time of land and resource management plan revision.

The proposed rule removes the four categories of lands considered for wilderness established in the existing rule at § 219.17(a)(1), and the five evaluation criteria for evaluating lands for wilderness designation found at § 219.17(a)(2). The agency believes such detailed procedural instructions are better suited for the Forest Service Directives System.

It should be noted that nothing in paragraph (a) precludes consideration of roadless areas for the full range of management options. Although wilderness designation must be one of the options considered, roadless areas are also subject to consideration for various other uses or degrees of protection, not unlike the case for most other portions of the plan area.

Paragraph (b) would reinforce the central role of land and resource management plans by requiring that any requirements for additional planning for special areas must be met through the land and resource management planning framework, unless certain identified exceptions exist. This is comparable to § 219.2 of the existing rule and is intended to assure that special area planning is integrated with the land and resource management plan. The proposed rule would specifically require that the goals, objectives, standards, or guidelines in special area plans be incorporated into the land and resource management plans as plan decisions.

Section 219.25 of the existing rule contains direction for research natural areas and is not repeated in the proposed rule. Rather, direction for special designations including natural areas are incorporated in a new section § 219.27 of the proposed rule.

Proposed Section 219.28—Determination of Land Suitable for Timber Removal

Under the proposed rule, vegetation management, such as timber harvest, is implemented for stewardship of natural resources, the production of wood fiber, and to provide for the use and enjoyment of public lands. The proposed rule would establish two classifications of land suitability for timber harvest. The first is the classification of lands not suited for timber production. The second is the classification of lands where timber harvest would be permitted to maintain or restore ecological integrity of the land, or to protect or achieve other multiple-use values. Within the second classification, the responsible official also would identify those lands where timber production is a land management objective.

Proposed Section 219.29—Limitation on Timber Removal

This section requires the estimation of the long-term sustained yield of timber on the land area where the production of timber is identified as a preliminary objective along with other objectives for management of the land. This estimate must be made based on the yield of timber that can be removed consistent with achievement of the desired conditions identified in the land and resource management plan. Timber harvests are not to exceed long-term sustained yield capacity.

The calculation of allowable sale quantity is a requirement in the existing rule. Calculation of an allowable sale quantity is not required under the proposed rule. The NFMA allows the Secretary to establish an allowable sale quantity for any decade that departs from the projected long-term average sale quantity that would otherwise be established (16 U.S.C. 1611). This permissive language of NFMA is included in this section of the proposed rule.

Planning Documentation

Proposed Section 219.30—Land and Resource Management Plan Documentation

The land and resource management plan documentation format under the proposed rule is intended to make the plan more understandable, more usable by Forest Service employees, and readily available to the public. The plan summarizes management direction and

contains maps and information from an annual monitoring and evaluation report and other information. The proposed rule would require that the set of documents that constitute a land and resource management plan be readily available to the public in various formats to meet the needs of the people who might want to access them. The plan is intended to be a repository for the information that is used by the decisionmaker. The format of the information will allow reviewers to follow the decisionmaking process and see the results of the decisions made about the management of the national forests or grasslands.

Paragraph (a) describes the summary document of the plan, which provides an understanding of the vision for the forest or grassland by including a description of the plan area's qualities and characteristics; the desired conditions of the plan area; and actions taken to achieve the desired condition. The summary would include a sampling of maps, charts, figures, photographs, and other information to enhance understanding. This summary also would contain enough information to allow the reader to know where actions are proposed, scheduled, or planned and where activities such as camping and sightseeing are available. The existing rule requires a brief summary of the analysis of the management situation that includes the demand and supply conditions for resource commodities and services, production potentials, and use and development opportunities.

Paragraph (b) requires a display of land suitable for selected uses. Each plan must display areas within the plan area that are suitable for specific uses of national forests and grasslands. The suitability of various uses (§ 219.26) is determined, as appropriate, within the proposed planning framework (§§ 219.3 through § 219.11) and includes goals, objectives, standards, and guidelines related to uses that would be permitted within specific areas.

Paragraph (c) requires a display of the decisions that apply to the area covered by the plan as described in § 219.7.

Paragraph (d)(1) requires a list of proposed, authorized, ongoing, and completed actions to achieve desired conditions. The list of actions is annually updated.

Paragraph (d)(2) requires the projection of a 2-year schedule of anticipated outcomes, products and services, based on a reasonable estimate of the Forest Service budget and capacity to perform the work needed to achieve them from which trends in achievement of desired condition can be established. The existing rule tends to produce unrealistic expectations of possible outputs and budgets.

Paragraph (d)(3) requires an updated 2-year summary of the actual outcomes, products and services as a result of project implementation.

Paragraph (d)(4) requires a forecast of the range of expected outcomes, goods, and services for the next decade. These projections are intended to describe a measure of expected progress toward meeting plan goals and objectives and progress toward achieving desired conditions and ecological sustainability. Although these forecasts contain a high degree of uncertainty and are only estimates, they will be useful to portray the expected trends into the future. These projections will be updated at the time of revision of the land and resource management plan.

Paragraph (d)(5) requires a list of anticipated accomplishments and the time necessary to achieve desired conditions. This would be updated to reflect changes in anticipated accomplishments.

Paragraph (e) requires the responsible official to display the minimum level of monitoring and evaluation to occur in the plan area. Monitoring and evaluation direction in the land and resource management plan would help determine whether there is a need to amend or revise the land and resource management plan.

Paragraph (f) requires a display of budgetary information. The existing rule requires a display of baseline and other budget projections that often do not reflect changes that occur during budget allocation. These projections then become unrealistic or misleading. The proposed rule would require the plan to display a concise summary of the estimated costs of the unit's program of work, including assessments, analyses, proposed and authorized actions, and monitoring. The display would also include details of the total current-year unit budget; funded actions, projections for future budgets over 2 years; and a display of the budget trends over, at least, the past 5 years. Budget information is not a land and resource management plan decision and can be updated at any time. The intent of this proposed requirement is to have a continuous display of budget trends and actual current budgets to allow meaningful discussions with the public and Congress as to the need for and accountability of budget allocations.

Paragraph (g) requires each plan to contain a list of reference materials and decisions used in forming management direction such as previous decision and environmental documents, assessments, conservation strategies, biological opinions, inventories, studies, research, and agency direction.

A crosswalk for reformatting existing land and resource management plans to the proposed format for plan content described in § 219.30 follows:

Existing land and resource management plan	Planning documentation
Analysis of the Management Situation	Findings and conclusions from assessments.
Desired Future Conditions/Goals Goods and services/outputs, Objectives, standards, and guidelines, Land allocations.	Plan decisions, including land suitability for uses, outcomes, maps.
5–10 year timber sale program	List of projects (past, current, proposed*).
Monitoring and evaluation	Monitoring plan, results of monitoring and evaluation.
Other Information From Forest Or Grassland Files.	
Resource project files	Site-specific actions (past, current, proposed*).
Budget information	Estimated costs—budgets (past, current, proposed).
	Adopted plans from other agencies.
	References—conservation strategies, recovery plans, best management practices.

*During transition of existing land and resource management plans to the proposed planning framework, proposed actions, including timber sales, are those that are in the NEPA process or have a decision document but have not been implemented. After transition, the timber sale program becomes a subset of the list of site-specific actions.

Proposed Section 219.31—Maintenance of the Plan and Planning Records

This section would establish a requirement to keep land and resource management plans up-to-date and readily available to the public. This section also describes those types of administrative changes that are considered maintenance and do not constitute a plan amendment or revision.

Objections and Appeals

Proposed Section 219.32—Objections to Amendments or Revisions

This provision of the proposed rule would replace the current 36 CFR Part 217 land and resource management plan post-decision appeal process with a pre-decision objection process. The intent is to further streamline the planning process and encourage resolution of issues by the supervisor of the responsible official. Under the proposed rule, any person would be allowed to object to a pending decision. The proposed rule would require that the objection be filed, in writing, within 30 days of public notice of the appropriate NEPA documentation. Unlike the current 217 regulation, the proposed objection process does not have a specific time limit for resolving objections. Under the proposed rule, the responsible official would not be allowed to approve an amendment or revision under objection until a decision on the objection has been reached and documented in an appropriate decision document for the land and resource management plan.

Proposed Section 219.33—Appeals of Site-specific Decisions

In the proposed rule, appeals regarding site-specific decisions would remain as they are currently addressed by agency procedures.

Applicability and Transition

Proposed Section 219.34—Applicability

This short section states that the proposed rule applies to all units of the National Forest System.

Proposed Section 219.35—Transition

This section provides for an orderly transition from the requirements of the existing rule to the provisions of the proposed rule.

Paragraph (b) would provide that existing land and resource management plans would remain in effect until amended or revised under the proposed rule. This provision is intended to prevent any uncertainty as to the status of current land and resource management plans.

Paragraph (f) of the proposed rule would provide for the withdrawal of regional guides by the Regional Foresters within a year of when all units within a National Forest System region have completed the revision process under the revised rule. Regional guides were developed to provide direction and guidance for the development of the initial land and resource management plans. Having served that purpose, regional guides may be withdrawn by the Regional Foresters.

Paragraph (g) would make clear that the responsible official must complete the first annual monitoring and evaluation report within 3 years from the effective date of proposed rule.

Definitions

Proposed section 219.36—Definitions

This section of the proposed rule defines the following terms:

Assessment or analysis area
Broad-scale assessment
Candidate species
Conservation agreements
Demand species
Desired condition
Desired non-native species
Disturbance processes
Diversity of plant and animal communities
Ecological composition
Ecological conditions
Ecological sustainability
Ecosystem
Ecosystem integrity
Ecosystem structure
Forest Service NEPA procedures
Historical range of variability
Local analysis
Native species
Plan area
Productive capacity of ecosystems
Reference landscapes
Responsible official
Roadless area
Salvage harvest of timber
Sanitation harvest of timber
Sensitive species
Species
Species viability
Timber production
Unroaded areas
Vegetation management
Watershed integrity

COMPARISON OF THE TABLE OF CONTENTS OF THE EXISTING (1982) AND PROPOSED RULES

1982 planning rule	Proposed planning rule
§ 219.1 Purpose and Principles	§ 219.1 Purpose. § 219.2 Goals and principles for planning.
§ 219.2 Scope of Applicability	219.34 Applicability.
§ 219.9 Definitions	219.36 Definitions.
§ 219.4 Planning levels	§ 219.3 Overview.
§ 219.5 Interdisciplinary Approach	§ 219.3 Overview.
§ 219.6 Public Participation	§ 219.12–18 COLLABORATIVE PLANNING FOR SUSTAINABILITY.
§ 219.7 Coordination with Other Public Planning Efforts	§ 219.14 Involvement of state and local government. § 219.13 Coordination among federal agencies.
§ 219.8 Regional Planning Procedures	Not applicable.
§ 219.9 Regional Guide Content	Not applicable.
§ 219.10 Forest Planning—General Procedures	§ 219.3 Overview.
§ 219.11 Forest Plan Content	§ 219.30–31 PLANNING DOCUMENTATION.
§ 219.12 Forest Planning Process	§ 219.3–11 FRAMEWORK FOR PLANNING.
§ 219.13 Forest Planning—Resource Integration Requirements (directs to other parts of rule).	No counterpart.
§ 219.14 Timber Resource Land Suitability	§ 219.28 Determination of land suitable for timber removal.
§ 219.15 Vegetation Management Practices	§ 219.7 Plan decisions that guide future actions.
§ 219.16 Timber Resource Sale Schedule	§ 219.7 Plan decisions that guide future actions. § 219.28 Determination of land suitable for timber removal § 219.29 Limitation on timber removal.

COMPARISON OF THE TABLE OF CONTENTS OF THE EXISTING (1982) AND PROPOSED RULES

1982 planning rule	Proposed planning rule
§ 219.17 Evaluation of Roadless Areas	§ 219.26 Identifying and designating suitable uses. § 219.27 Special designations.
§ 219.18 Wilderness Management	§ 219.27 Special designations.
§ 219.19 Fish and Wildlife Resource	§ 219.19–21 ECOLOGICAL, SOCIAL, AND ECONOMIC SUSTAINABILITY. § 219.26 Identifying and designating suitable uses
§ 219.20 Grazing Resource.	
§ 219.21 Recreation Resource.	
§ 219.22 Mineral Resource.	
§ 219.23 Water and Soil Resource.	
§ 219.24 Cultural and Historic Resource.	
§ 219.25 Research Natural Areas	§ 219.27 Special designations.
§ 219.26 Diversity	§ 219.20 Ecological sustainability.
§ 219.27 Management Requirements	§ 219.7 Plan decisions that guide future actions § 219.19–21 ECOLOGICAL, SOCIAL, AND ECONOMIC SUSTAINABILITY. § 219.28 Determination of land suitable for timber removal.
§ 219.28 Research	§ 219.22–25 THE CONTRIBUTION OF SCIENCE.
§ 219.29 Transition Period	§ 219.35 Transition.

Public Comment Invited

The Forest Service invites individuals, organizations, and public agencies and governments to comment on this proposed rule. To aid the analysis of comments, it would be helpful if reviewers would key their comments to specific proposed sections or topics. Respondents also should know that in analyzing and considering comments, the Forest Service will give more weight to substantive comments than to simple ''yes,'' ''no,'' or ''check off'' responses to form letter/questionnaire-type submissions.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 219.3 Overview). (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? (6) What else could we do to make the rule easier to understand?

Send any comments on how we could make this rule easier to understand to the address shown earlier in this document.

Regulatory Certifications

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not an economically 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 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 entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. However, because of the extensive interest in National Forest System planning and decisionmaking, the Office of Management and Budget has determined this rule to be significant and thus, subject to OMB review under Executive Order 12866.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), and it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined by that Act. The rule imposes no requirements on either small or large entities. Rather, the rule sets out the process the Forest Service will follow in planning for the management of the National Forest System. The rule should increase opportunities for small businesses to become involved in both site-specific and national forest and grassland plan decisions. Moreover, by streamlining the planning process, small businesses should see more timely project-level decisions that affect outputs of products and services.

No Takings Implications

This proposed 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 proposed rule only modifies the process for administrative review of Forest Service decisions for land and resource management plans.

Civil Justice Reform Act

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule were adopted, (1) all state and local laws and regulations that are in conflict with this proposed rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates Reform

The President signed into law on March 22, 1995, direction regarding unfunded mandates. The Department has assessed the effects of this rule on state, local, and tribal governments and the private sector. This 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.

Environmental Impact

This proposed rule deals with the development and adoption of Forest Service land and resource management plan decisions as well as procedures for developing site-specific decisions which may include decisions regarding the occupancy and use of National Forest System land. An environmental review will be completed before adoption of a final rule.

Controlling Paperwork Burdens on the Public

Proposed § 219.32 Objections and Appeals would establish a new process for citizens and groups to object to a forest plan amendment or revision decision. Instead of appealing a decision after it is made under the rules of 36 CFR Part 217, the proposed rule would allow interested and affected persons and groups to file an objection before the decision is made.

The proposed rule sets out the information that an objector would need to provide in order to file an objection to a proposed decision. This information is the same information that is currently required by the rules at 36 CFR Part 217, which provide post-decisional administrative appeal and review of land and resource management plan decisions. 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 initialed number.

Description of the Information Collection

The following describes the information collection associated with this rulemaking:

Title: Objection to Amendment or Revision of Land and Resource Management Plans.

OMB Number: New.

Expiration Date of Approval: New.

Type of Request: The following describes the new information collection requirement which has not received approval by the Office of Management and Budget:

Abstract: The information to be required by § 219.32 is the minimum information needed for a citizen or organization to explain the nature of the objection being made to a proposed land and resource management plan amendment or revision and the reason why the individual or organization objects. Specifically, an objector must provide name, mailing address and telephone number; a statement of the information or decisions to which the person or organization objects; a description of the part or parts of the forest plan amendment or revision being objected to; a concise statement explaining why the responsible official's pending decision should not be adopted, and a description of the objector's prior participation in the planning process for the amendment or revision to which the objection is being made.

The responsible official must respond to any objection in the final decision document.

Estimate of Burden: 10 hours to prepare the objection.

Type of Respondents: Interested and affected individuals, organizations, and governmental units who participate in the planning process: such as persons who live in or near national forest and grassland units; local, state, and tribal governments who have an interest in the plan; federal agencies with an interest in the management of National Forest System lands and resources; not-for-profit organizations interested in National Forest System management, such as environmental groups, recreation groups, educational institutions; commercial users of National Forest System lands and resources.

Estimated Number of Respondents: 1,210 a year.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: $1 \times 1210 \times 10 = 12{,}100$ hour.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this proposed information requirement will be included in the record of this rulemaking and considered in the adoption of a final rule as well as summarized and included in the request for Office of Management and Budget approval of the final rule.

Send comments regarding this burden estimate or any other aspect of this proposed collection of information, including suggestions for reducing the burden to the **ADDRESS** shown at the beginning of this notice as well as to the Forest Service Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Federalism

The agency has considered this proposed rule under the requirements of Executive Order 12612 and made a preliminary assessment that the rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment on federalism implications is necessary at this time. In addition, the agency has reviewed the consultation requirements under Executive Order 13132, which is effective on November 2, 1999. This Order calls for enhanced consultation with state and local governmental officials and emphasizes increased sensitivity to their concerns. In the spirit of these new requirements, the agency has consulted with the Western Governors' Association and the Natural Resources Committee of the National Governors' Association for comments on a draft version of the proposed rule. Representatives of the Western Governors' Association indicated that the proposed rule fits the principles espoused in their organization's ENLIBRA policy, which encourages greater participation and collaboration in decisionmaking, focuses on outcomes rather than programs only, and recognizes the need for a variety of tools beyond regulation that can improve environmental and natural resource management. The National Governors' Association also has adopted the ENLIBRA policy.

The proposed rule calls for enhanced collaboration with state and local governments. Proposed § 219.14 shows sensitivity to federalism concerns from a substantive standpoint. It requires Forest Service responsible officials to recognize the jurisdiction, expertise, and role of constituencies and local comminutes interested in, or affected by, use of the National Forest System. Under the proposed rule, the responsible official must provide opportunities for involvement of state and local governments in the planning process, including opportunities to participate in the identification of topics of general interest or concern related to planning. Prior to adopting a final rule, the Department will consider the extent

to which additional consultation is appropriate under E.O. 13132.

List of Subjects

36 CFR Part 217

Administrative practice and procedure, and national forests.

36 CFR Part 219

National Forest System Land and Resource Management Planning.

Therefore, for the reasons set forth in the preamble, parts 217 and 219 of Chapter II of Title 36 of the Code of Federal Regulations are proposed to be amended as follows:

PART 217—APPEAL OF REGIONAL GUIDES AND NATIONAL FOREST LAND AND RESOURCE MANAGEMENT PLANS

1. Remove part 217.
2. Revise Part 219 to read as follows:

PART 219—PLANNING

Subpart A—National Forest System Land and Resource Management Planning

Sec.

Purpose, Goals, and Principles

219.1 Purpose.
219.2 Goals and principles for planning.

The Framework for Planning

219.3 Overview.
219.4 Topics of general interest or concern.
219.5 Information development and interpretation.
219.6 Proposed actions.
219.7 Plan decisions that guide future actions.
219.8 Amendment.
219.9 Revision.
219.10 Site-specific decisions and authorized uses of land.
219.11 Monitoring and evaluation.

Collaborative Planning for Sustainability

219.12 Collaboration and cooperatively developed landscape goals.
219.13 Coordination among federal agencies.
219.14 Involvement of state and local governments.
219.15 Interaction with American Indian tribes and Alaska Natives.
219.16 Relationships with interested individuals and organizations.
219.17 Interaction with private landowners.
219.18 Role of advisory groups and committees.

Ecological, Social, and Economic Sustainability

219.19 Ecological, social, and economic sustainability.
219.20 Ecological sustainability.
219.21 Social and economic sustainability.

The Contribution of Science

219.22 The role of assessments, analyses, and monitoring.
219.23 The participation of scientists in planning.
219.24 Science consistency evaluations.
219.25 Science advisory board.

Special Considerations

219.26 Identifying and designating suitable uses.
219.27 Special designations.
219.28 Determination of land suitable for timber removal.
219.29 Limitation on timber removal.

Planning Documentation

219.30 Land and resource management plan documentation.
219.31 Maintenance of the plan and planning records.

Objections and Appeals

219.32 Objections to amendments or revisions.
219.33 Appeals of site-specific decisions.

Applicability and Transition

219.34 Applicability.
219.35 Transition.

Definitions

219.36 Definitions.

Authority: 5 U.S.C. 301; and Secs. 6 and 15, 90 Stat. 2949, 2952, 2958 (16 U.S.C. 1604, 1613).

Subpart A—National Forest System Land Resource Management Planning

Purpose, Goals, and Principles

§ 219.1 Purpose.

(a) Planning for the National Forest System guides the Forest Service's stewardship of the natural resources of the national forests and grasslands to fulfill the purposes for which these lands are designated and to honor their unique place in American life. These regulations set forth a process for implementing, amending, and revising land and resource management plans for the National Forest System and for monitoring results of plan implementation. These rules also guide the selection and implementation of site-specific projects and activities. The principle authorities governing the development of land and resource management plans and management of the National Forest System are the National Forest Management Act of 1976; the Forest and Rangeland Renewable Resources Act of 1974; the Organic Act of 1897; the Multiple-Use Sustained-Yield Act of 1960; the Endangered Species Act of 1973; and the Clean Water Act of 1977.

(b) The National Forest System constitutes an extraordinary national legacy created by people of vision and preserved for future generations by diligent and far-sighted public servants and citizens. They are the people's lands, emblems of our democratic traditions.

(1) The national forests and grasslands can provide many and diverse benefits to the American people. These include clean air and water, productive soils, biological diversity, products and services, employment opportunities, community benefits, recreation, and naturalness. They also give us intangible qualities, such as beauty, inspiration, and wonder.

(2) To assure the continuation of this array of benefits, sustainability should be the guiding star for stewardship of the national forests and grasslands. Like other overarching national objectives, sustainability is broadly aspirational and can be difficult to define in concrete terms. Yet, especially considering the increased human pressures on the national forests and grasslands, it becomes ever more essential that planning and management begin with this central tenet.

(3) Sustainability is broadly recognized to be composed of interdependent elements, ecological, economic, and social. It operates on several levels. As a collective outlook for the future, sustainability means meeting the needs of the present generation without compromising the ability of future generations to meet their needs. As an approach to decisionmaking, it calls for integrating the management of ecological systems with their social and economic context while acknowledging that management should not compromise the basic functioning of these systems. As a measure of progress, it provides a set of criteria and indicators to guide action. Building on this foundation of sustainability, the national forests and grasslands can provide a wide variety of uses, values, products, and services that are important to so many people, including outdoor recreation, forage, timber, wildlife and fish, water use, and minerals.

§ 219.2 Goals and principles for planning.

Land and resource management planning is directed toward achievement of the following major goals and guiding principles:

(a)(1) Goal: Planning must be directed toward assuring the ecological sustainability of our watersheds, forests, and rangelands. The benefits we seek from the national forests and grasslands depend upon the long-term ecological sustainability of the watersheds, forests, and rangelands. Considering the increased human pressures on them, it becomes ever more essential that planners focus on the heart of the idea of sustainability, that our use today does

not impair the functioning of ecological processes and the ability of these natural resources to contribute economically and socially in the future. Accordingly, a priority for stewardship in the national forests and grasslands must be to maintain and restore the ecological sustainability of watersheds, forests, and rangelands for present and future generations. At the same time, planning recognizes that ecological, economic, and social sustainability are inextricably linked: impairing the sustainability of any one aspect affects the entirety.

(2) Guiding principles. (i) Planning provides the guidance for the diversity of plant and animal communities and the productive capacity of ecological systems, the core elements of ecological sustainability. Biological diversity and ecological productivity, in turn, depend on the viability of individual species. Diversity is sustained only when species persist. In addition, biological diversity and ecological productivity depend on maintaining the characteristic composition, structure, and processes of ecosystems in the presence of human and natural disturbances, and on maintaining the ecological integrity of these systems.

(ii) Planning must be based on science and other knowledge, including the use of scientifically based strategies for sustainability. The best available ecological, economic, and social information and analysis must be considered in creating the foundation of land and resource management planning. Planning should consider information from a wide range of sources, including scientists in public and private organizations as well as other knowledgeable people in tribes and local communities.

(iii) Planning requires independent scientific review of assessments and plans before their publication. Broad-scale assessments should suggest methods and strategies for providing for species viability and ecological integrity. With that information, planners should construct conservation strategies and have them reviewed for accuracy and sufficiency by Forest Service and other scientists before a plan becomes final.

(iv) Plans should include measures for evaluating whether stewardship goals have been achieved. Because one of the core functions of planning is to foster informed decisions through ongoing assessment and evaluation, effective monitoring is a crucial aspect of planning and management. Additionally, independent field review by Forest Service and outside technical and scientific experts plays an important role in monitoring the contribution of plans to the sustainability of our forests, streams, and watersheds.

(b)(1) Goal: Plans promote economic and social sustainability by providing for a wide variety of uses, values, products, and services and by enhancing society's capability to make sustainable choices. The national forests and grasslands have been a grand experiment in providing for the multiple-uses (outdoor recreation, forage, timber, wildlife and fish, water use, and minerals) of these lands on a permanent basis in accordance with Gifford Pinchot's dictates that the lands be devoted to their most productive use for the permanent good of the whole people * * * always bearing in mind that the conservative use of these resources in no way conflicts with their permanent value. The planning and management of these lands should be an example for the entire world of stewardship that provides a wide variety of uses, values, products, and services in ways that are compatible with long-term ecological, economic, and social sustainability.

(2) Guiding principles. (i) Planning needs to recognize the interdependence of forests, rangelands, and watersheds with economies and communities. Many communities depend on the national forests and grasslands for much of their economic, social, and cultural sustenance. Although the Forest Service cannot and should not be expected to single-handedly sustain existing economies and communities, the national forests and grasslands nonetheless contribute many values, services, outputs, and uses that allow economies and communities to persist, prosper, and evolve. Within a context of sustaining ecological systems, planning must take generous account of compelling local circumstances. This approach includes the needs of ranching, farming, timber, and mining communities as well as the needs of American Indian and Alaska Native communities that rely upon treaty obligations.

(ii) Planning should foster a broad-based understanding of the vital interrelationship between communities and sustainably managed forests and grasslands. The planning process should provide mechanisms through which communities can organize their energies and enterprises in a manner that promotes economic and social sustainability and develop realistic expectations about long-term uses, values, outputs, and services contributed by the national forests and grasslands.

(iii) The planning process should foster strategies and actions that provide for human use in ways that contribute to long-term sustainability. Finding strategies and actions that contribute to long-term sustainability, rather than those that work against it, is the surest way to increase the predictability of these uses.

(iv) The National Forest System planning process must recognize the rights of American Indian tribes and Alaska Natives. American Indian tribes and Alaska Natives possess unique and important rights recognized by federal treaties, statutes, and executive orders. The Forest Service has a general trust responsibility to federally recognized tribes and a duty to acknowledge them as sovereign governments and to work with them on a government-to-government basis. Depending on the circumstances of particular tribes and national forests, such lands also may provide for tribal hunting, fishing, and gathering rights; access to sacred sites; protection of graves and other archaeological sites; watershed protection for down-stream American Indian reservations; Alaska Native communities; and fishing sites.

(c)(1) Goal: Planning recognizes and is efficiently integrated into the broader geographic, legal, political, and social landscape within which national forests and grasslands exist. In every sector of the country, the Forest Service is just one important agency among many important governmental and private entities and land ownerships. Some of these agencies have statutory authority affecting the national forests and their resources. Other agencies, governments, corporations, and citizens manage land in and around the national forests and grasslands. Still others have a keen interest in the national forests and can affect the way the public views Forest Service action. Sustainability of watersheds and other natural areas in which national forests and grasslands are located will inevitably depend upon activities on nearby federal lands, tribal lands, and state lands, and private lands and on the actions and attitudes of a wide variety of agencies, governments, and citizens. These landowners will vary in their abilities as well as their interest in providing the mix of uses, products, values, and services that people seek from forests and rangelands. The planning process, therefore, must be outward-looking. It must have the goal of understanding the broader landscape in which the national forests and grasslands lie. And, it must strive to achieve the highest ideals in managing public lands within the context of how people, businesses, and

governments will conserve, regulate, and use lands within and around the national forests and grasslands.

(2) Guiding principles. (i) Assessment and planning require a coordinated approach by all affected federal agencies. Cooperation from the beginning with all federal agencies with statutory authority over specific resources within the national forests and grasslands is essential. Obtaining the early participation of, and joint planning with, all federal land management agencies in the area as appropriate to the issue, is another key to successful planning.

(ii) Planning proceeds from start to finish in close cooperation with state, tribal, and local governments. Success in achieving goals for the national forests and grasslands may depend upon decisions made by other jurisdictions. Similarly, the Forest Service often can help other jurisdictions achieve their objectives through cooperation.

(iii) Planning is interdisciplinary. Analyses and development of options must respond to a broad range of scientific, economic, and social concerns. Therefore, planning teams must represent diverse disciplines and work together collectively to develop information and alternatives. Additionally, consultants can be employed to tap other relevant sources of knowledge.

(iv) Planning must be based on the spatial and temporal scales necessary to assure sustainability and provide for multiple-use. Ecological boundaries that also have social meaning, such as river basins and mountain ranges, will be useful for planning in the future. These planning boundaries often do not follow the boundaries of the national forests and grasslands. To achieve long-term sustainability, planning must often take into account cumulative effects on resources within and beyond the boundaries of the national forests and grasslands and well beyond the life of a plan.

(v) Planning recognizes the regional, national, and global implications of management. Assessment and planning should acknowledge how management of the national forests and grasslands can contribute to ecological, economic, and social sustainability on regional, national, and international scales. Often, federal lands will need to anchor regional and national conservation strategies for species and ecosystems so other landowners can continue production of products and services without undue restriction. In addition, the wood, forage, water, and recreation they provide are often important to regional economies.

(vi) Planning acknowledges the limits and variability of likely budgets. Plans should be realistic in budget estimates and resilient in the face of erratic budgets. The public should become aware of the degree to which plan implementation is dependent on annual budgets.

(d)(1) Goal: Planning meaningfully engages the American people in the stewardship of their national forests and grasslands and builds stewardship capacity. The national forests and grasslands belong to the American people. For these truly to be the people's lands, the people must understand the land's condition, potential, limitations, and role in resource conservation in this country. Just as the Forest Service can help the American people learn about the limits and capabilities of the national forests and grasslands, so too must the managers be educated by the unique knowledge, advice, and values of the American people. Citizens can provide a wide array of services, ranging from volunteer work on trail crews to participating in collaborative efforts aimed at resolving disputes over specific projects. The Forest Service should draw on this knowledge, wisdom, and energy by building relationships, dialogues, and partnerships with the groups and individuals who wish to have a role in setting the future course for the national forests and in implementing these decisions.

(2) Guiding principles. (i) The planning process should encourage extensive collaborative citizen participation. Land and resource management planning must provide mechanisms for broad-based, vigorous, and ongoing opportunities for open public dialogue. These dialogues should be open to any person at reasonable times, conducted in non-technical terms, readily understandable, and structured in a manner that recognizes and accommodates personal schedules, capabilities, and interests. The participation of citizens should be encouraged from the beginning and be maintained throughout the planning process. The public should be offered an opportunity to participate in activities such as, but not limited to, assessments, issue identification, implementation, and monitoring.

(ii) Planning builds upon the human resources in local communities. Just as local communities depend on the national forests and grasslands, so too the health of many forests, rangelands, and watersheds depends on healthy neighboring communities. Many restoration actions are needed on these lands, including programs to improve riparian conditions, reduce fuel loads, and rebuild and decommission roads. These efforts require entrepreneurs and a trained workforce. The surrounding communities can help provide these services. Planning and management must realize the full potential of these human resources to further the stewardship of the national forests and grasslands.

(iii) Planning and plans must be understandable. A central purpose of planning is to speak directly to the public. The language of planning must be clear and straightforward. These are the people's lands, and decisions proposed through planning must be accessible to the public.

(iv) Planning should actively seek out and address key issues. The best guidance will emerge from an open, candid, and collaborative process that addresses key issues.

(v) Effective planning should restore and maintain the trust of the American people in the management of the national forests and grasslands. Planning is a principal setting in which the Forest Service relates to the public. It can be a valuable forum in which to reestablish the public's confidence. The Forest Service needs to work on the premise that effective planning and management cannot be achieved without the public's respect and trust. Therefore, planning should integrate the public into the process as easily as possible, give the public accurate and complete information in a way that can be understood, make extensive use of public input, and meet public expectations by adopting realistic plans and fulfilling their objectives until amended. Effective planning welcomes independent field review of plans and actions.

(e)(1) Goal: Planning, which must be at once visionary and pragmatic, guides stewardship. Planning has long been viewed as a burdensome exercise with little connection to management. In fact, planning must be an integral part of stewardship of the national forests and grasslands: plans must be working guides that Forest Service employees find useful and motivating. Given the frequency with which new issues arise, new information becomes available, and unforeseen events occur, planning should be viewed as an ongoing process, where decisions are adapted, as necessary, to new understandings.

(2) Guiding principles. (i) Planning organizes around a collective vision of the desired condition. Developing a collective vision of future landscape conditions and the uses, products, values, and services that will be

provided by these conditions represent the best hope for a coming together of the people and groups that care about the national forests and grasslands. The plan document should begin with a short mission statement that captures this vision. The desired condition and the outcomes associated with it should serve as the central reference points for planning and management of these lands. Performance measures, monitoring, and budgets should be directed toward achievement of the actions and conditions needed to move toward the desired future.

(ii) Planning should be efficient in achieving goals. Strategies that simultaneously address multiple goals and find the least-cost method for achieving these goals are essential guides to efficient stewardship as is demonstration that the social benefits exceed the social cost.

(iii) Planning must be innovative but practical. Planning is not an end in itself but rather must be a useful endeavor that furthers real-world objectives, including serving as a working guide for stewardship. Valuable innovations have been developed during Forest Service planning, ranging from successful collaborative efforts to multi-agency watershed and broad-scale assessments.

(iv) Planning must be done expeditiously. Lengthy planning efforts frustrate public participants, strain Forest Service resources, and can result in plans that are outdated when adopted. Planners should aim to complete the planning phases from assessment through formal adoption of small landscape plans within 3 years. To accommodate this goal, analytical requirements should be kept to a minimum consistent with achieving the purposes of planning.

(v) Plans should be dynamic and adaptable. While a plan should strive to attain a reasonable degree of predictability in its implementation, everyone must recognize that unpredictable events, ranging from natural disturbances to changed market conditions, will occur. Forest Service officials must respond to new circumstances through plan amendments and revisions so that the plans will remain fully current. Plans must be evolving documents.

The Framework for Planning

§ 219.3 Overview.

(a) The nature of land and resource management planning. Land and resource management planning is a continuous, collaborative process designed to fully engage the public and apply the best available scientific information and analysis to provide for ecological, social, and economic sustainability in the use and enjoyment of National Forest System lands. The planning framework set out in this part outlines a flexible procedure for fitting solutions to the scope and scale of needed actions which includes the assessment of land and resources, collaboratively developed landscape goals, guidance for future actions, site-specific projects, and monitoring and evaluation of outcomes. The planning framework is built on the following premises:

(1) Planning based upon a broad-scale assessment of the ecological, social, and economic environments is key in gaining understanding among people living near or interested in national forests or grasslands; establishing cooperatively developed landscape goals; and helping to ensure environmental justice for all citizens.

(2) To achieve an interdisciplinary, collaborative approach in planning, responsible officials, planners, and managers may engage the skills and interests of any appropriate combination of Forest Service staff, consultants, contractors, other federal, state, American Indian tribe, Alaska Natives, or local government personnel, or other interested or affected people.

(3) Plan decisions that guide future agency actions within units of the National Forest System (§ 219.7) reside in land and resource management plans which integrate the decisions applicable to the plan area and are repositories for planning-related documents.

(4) Through the consideration of local needs, conditions, and effects, within the planning framework, site-specific projects may be authorized if they are consistent with the decisions applicable to the plan area.

(5) The planning framework is a continuous cycle of engaging the public, developing land and resource management plan decisions and site-specific projects, monitoring and evaluating outcomes, and progressively improving land and resource management through plan amendments or revisions and site-specific projects to achieve the desired conditions as articulated in land and resource management plans.

(b) Levels of planning and decisionmaking. Planning is undertaken at the national, regional, and/or national forest or grassland administrative levels depending on the nature and scope of topics of general interest or concern and subject to limitations and delegation of authority. National level planning establishes long-term strategic goals, objectives, and outcome measures to be considered in managing the National Forest System. The Forest or Grassland Supervisor is the responsible official for the land and resource management plan. District Rangers, consistent with delegated authority, are responsible for proposing, evaluating, approving, and implementing site-specific projects and activities. When planning is required for more than one national forest or grassland, two or more Forest or Grassland Supervisors may combine their planning activities. A topic, such as the recovery of an endangered or threatened species, may require one or more Regional Foresters or the Chief of the Forest Service to undertake planning and decisions which may amend one or more land and resource management plans.

(c) Key elements. Key elements of land and resource management planning and decisionmaking processes are:

(1) Broad-scale assessments (§ 219.4(b)) and Cooperatively developed landscape goals (§ 219.12(b));

(2) Topics of general interest or concern;

(3) Information development and interpretation;

(4) Proposed actions;

(5) Plan decisions that guide future actions;

(6) Amendment;

(7) Revision;

(8) Site-specific decisions; and

(9) Monitoring and evaluation.

§ 219.4 Topics of general interest or concern.

(a) Origination of topics of general interest or concern. Topics of general interest or concern may originate from a variety of sources, including but not limited to, inventories, assessments, monitoring and evaluation of projects; Forest Service conservation leadership initiatives; cooperatively developed landscape goals; enactment of new laws or policies; applications for authorization for occupancy and use of National Forest System lands; or from discussions among people, organizations, or governments interested in or affected by National Forest System management.

(b) Consideration of topics of general interest or concern. The responsible official has the discretion to determine whether a topic of general interest or concern is appropriate for further consideration.

(1) In making this determination, the responsible official should consider such factors and information as the following:

(i) the scope, complexity, and geographic scale of potential actions that may address the topic;

(ii) statutory requirements;

(iii) organizational capabilities and available resources;

(iv) the scientific basis and merit of available data and analyses;

(v) the anticipated consistency of possible actions with existing plans, adopted conservation strategies, biological opinions, or other strategies applicable within all or a portion of the plan area; and

(vi) the extent of involvement and the views and opinions of interested or affected individuals, organizations, or other entities, and related social, cultural, or spiritual values.

(2) In addition, the responsible official should consider the extent to which addressing the topic relates to or provides:

(i) an opportunity to contribute to the achievement of cooperatively developed landscape goals and landscape settings consistent with public expectations;

(ii) an opportunity for the national forests and grasslands to contribute to the restoration or maintenance of ecological integrity and maintenance or restoration of watershed function, including water flow regimes to benefit aquatic resources, groundwater recharge, municipal water supply, or other uses;

(iii) an opportunity and unique features that the national forests or grasslands can contribute to ecological, social, and economic sustainability;

(iv) an opportunity to restore or maintain ecological conditions that are similar to the biological and physical range of natural variability;

(v) an opportunity to recover threatened or endangered species or maintain or restore ecological conditions needed for the viability of focal species; and

(vi) The potential for disproportionately high or adverse environmental effects upon minority populations.

§ 219.5 Information development and interpretation.

Information related to a topic of general interest or concern may be obtained from inventories, broad-scale assessments, local analyses, or from information voluntarily submitted by interested parties, including American Indian tribes, Alaska Natives, adjacent landowners, or others. If the responsible official determines that a topic of general interest or concern should receive further consideration, the responsible official should review available information and determine if additional information is desirable and can be obtained at a reasonable cost and in a timely manner. The responsible official may develop or supplement either a broad-scale assessment or a local analysis, depending on the scale of the topic of general interest or concern. The responsible official has the discretion to chose the method and determine the scope of the collection of new information. The findings, recommendations, or reports from inventories, broad-scale assessments, local analyses, or other studies are used to characterize current conditions and to help to make informed decisions about management activities, such as resource protection and watershed restoration, and should be readily available to the public. The results from inventories and broad-scale assessments, local analyses, and other studies are not proposed actions or decisions subject to NEPA procedures.

(a) Broad-scale assessments. (1) Broad-scale assessments provide information regarding ecological, economic, or social topics that are broad in geographic scale, sometimes crossing Forest Service regional administrative boundaries. Broad-scale assessments related to ecological topics should be conducted within broad ecological boundaries that may include biological or geographic regions or the range of one or more fish, wildlife, or plant species. Social and economic topics should be addressed, as appropriate, in broad-scale assessments. For some topics, an assessment that combines ecological, economic, and social topics may be necessary or desirable. Ecological factors are set forth in § 219.20; social and economic factors are set forth in § 219.21.

(2) Broad-scale assessments may be led by the Forest Service or, by agreement of the responsible official, by others. In addition to the requirements of §§ 219.20 and 219.21, broad-scale assessments must include the best available scientific information and analysis and provide the following:

(i) Findings and conclusions that describe historic conditions, current status, and future trends of ecological, social, and/or economic conditions and their relationship to sustainability. These findings and conclusions may be used by the responsible official to develop proposals for land and resource management plan amendments or revisions, or in making site-specific decisions, including authorizations for land uses. Findings and conclusions from broad-scale assessments also may be used in the development of conservation strategies or in other activities that contribute to land and resource management planning.

(ii) Identification of the need for additional research to develop new information or address conflicting interpretations of existing information.

(3) Regional Foresters are responsible for National Forest System participation in broad-scale assessments. Each broad-scale assessment should be designed and conducted with the assistance of scientists, resource professionals, governmental entities, and other individuals and organizations knowledgeable of the assessment area.

(b) Local analyses. Local analyses provide needed information to aid in the identification of possible actions or projects to achieve desired conditions. The need for, and the scope and intensity of, local analyses vary based on local topics of general interest or concern, availability of information, and applicable resource and social values. Recommendations from local analyses may be used in making future decisions. When deemed appropriate, local analyses should address ecological, social, and economic factors as set out in §§ 219.20 and 219.21. The delineation of the area to be covered by a local analysis is determined by watersheds or ecological units. Local analyses may tier to, and may often provide information to update, a broad-scale assessment. Local analyses are to be completed by the responsible official and provide the following:

(1) A characterization of the area of analysis;

(2) An identification of topics of general interest or concern within the analysis area;

(3) A description of current conditions;

(4) A description of likely future conditions;

(5) A synthesis and interpretation of information; and

(6) Recommendations for future decisions, as appropriate.

§ 219.6 Proposed actions.

(a) Proposal. Based on the consideration of factors in § 219.4 and the available information and analyses in § 219.5, the responsible official may propose to amend or revise the appropriate land and resource management plan, propose a site-specific project, or both.

(b) NEPA requirements. Unless otherwise exempted by statute, court order, or published agency procedures, the responsible official must analyze the effects of the proposal and alternative(s) in conformance with Forest Service NEPA procedures. The responsible official may use the planning framework to accomplish the scoping process described in agency NEPA procedures.

§ 219.7 Plan decisions that guide future actions.

Land and resource management plans embody four categories of decisions that guide or prescribe alternative uses of federal resources upon which future agency action will be based. Plan decisions are added, modified, or revised through amendment or revision of the applicable land and resource management plan. Plan decisions do not explicitly commit resources to specific projects, but rather provide a framework for choosing projects to which resources may be committed later. These plan decision categories are as follows:

(a) Desired resource conditions to achieve the long-term sustainability sought over a specified period of time in all or portions of the plan area. Desired resource conditions may include, but are not limited to, the desired watershed and ecological conditions and aquatic and terrestrial habitat characteristics.

(b) Goals, objectives, standards, and guidelines that are applicable to all or a portion of the plan area.

(1) Resource management goals are statements of intent, normally expressed in general, non-quantitative terms, which contribute toward achieving desired conditions. The goals link Forest Service policies, laws, Executive Orders, regulations, and applicable Forest Service strategic plans with specific measurable objectives. Goals are fulfilled through the achievement of measurable objectives.

(2) Objectives are concise statements that describe desired measurable results intended to achieve one or more goals. Objectives include a statement of the estimated amount of time needed for their completion, their contribution toward achievement of the goals of the plan area, and, if appropriate, a desired level of products and services anticipated.

(3) The standards and guidelines of a land and resource management plan provide criteria necessary to achieve resource management objectives and to promote compliance with applicable law, regulation, and policy. For example, standards and guidelines must address focal species; protection or restoration of watershed integrity including water quantity and quality; protection, maintenance and recovery of native aquatic and terrestrial dependent species; and, prevention of the introduction and spread of non-native species. By statute (16 U.S.C. 1604(g)), the land and resource management plan must provide standards and guidelines for timber harvest and regeneration methods including the limitations on even-aged harvest methods as required by 16 U.S.C. 1604(g)(3)(F), maximum size openings from timber harvest, and techniques for achieving aesthetic objectives by blending the boundaries of vegetation treatments.

(c) Designation and identification of suitable uses and designation of special areas in all or portions of the plan area. The responsible official must identify those lands within units of the National Forest System that are suited for specific uses (§ 219.26), including identification of the necessary transportation system and special designations as described in § 219.27, and lands where timber production is an appropriate objective (§ 219.28).

(d) Monitoring and evaluation requirements within the plan area. These requirements are set forth in § 219.11.

§ 219.8 Amendment.

(a) Amending land and resource management plans. An amendment to a land and resource management plan is a programmatic decision that guides or proscribes future Forest Service action.

(1) For each amendment, the responsible official must complete appropriate environmental analyses and public participation consistent with Forest Service NEPA procedures. A proposed amendment that may create a significant environmental effect and thus require preparation of an environmental impact statement is considered to be a significant change in the land and resource management plan. Public review of such an amendment must be comparable to that described in § 219.9(e).

(2) Following completion of NEPA procedures, any person may file an objection to the proposed amendment and initiate the objection process under § 219.32.

(3) The responsible official may make a decision to approve a plan amendment after the conclusion of the 30-day period provided to file an objection in § 219.32.

(b) Plan amendments in conjunction with site-specific decisions. As described in § 219.32, a person may object to a land and resource management plan amendment, including an amendment of a land and resource management plan proposed in conjunction with a pending site-specific project decision.

§ 219.9 Revision.

(a) Application of the revision process. Revision of a land and resource management plan is required whenever circumstances affecting the entire plan area or major portions of the plan area have changed significantly or every 15 years as required by law. The revision process is an opportunity to review of the overall outcome of the management of a unit of the National Forest System and consider the likely results if plan decisions were to continue in effect. The revision process is completed when one or more of the decisions of a land and resource management plan are revised or determined to continue without change.

(b) Initiating revision. To begin the revision process, the responsible official must:

(1) Summarize inventories, monitoring and evaluation results, new data, findings and conclusions from appropriate broad-scale assessments (§ 219.5(a)), new or revised Forest Service policies, and changes in circumstances affecting the entire or major portions of the plan area;

(2) Evaluate and provide for an independent scientific review of the effectiveness of the current land and resource management plan in fulfilling the goals of ecological sustainability (§ 219.20);

(3) Identify new proposals for special areas, including unroaded areas (§ 219.36), special designations, and areas under consideration for wilderness designation (§ 219.27(a));

(4) Develop a priority list of specific watersheds in need of protective or restoration measures;

(5) Identify lands currently classified as not suitable for timber production (§ 219.28(b)); and

(6) Develop an estimate of anticipated outcomes, products, and services for a 10-year period based on the land and resource management plan decisions in effect at the time the revision process begins.

(c) Public notice of revision process and review of information. The responsible official must give public notice of the initiation of plan revision and make the information developed under paragraph (b) of this section available for public comment for at least 45 calendar days.

(d) Proposed revision of one or more land and resource management plan decisions.

(1) Based upon the information gathered, including any comments received in response to information made available to the public in paragraph (c) of this section, the responsible official must issue a Notice of Intent to revise one or more of the decisions embodied in a land and resource management plan. In addition to the requirements established by NEPA procedures, the Notice of Intent must describe the decisions proposed to be revised in a statement of purpose and need for the proposed action and identify specific opportunities to fulfill

National Forest System goals as set forth in laws, Executive Orders, regulations, Forest Service directives, and applicable Forest Service strategic plans.

(2) The responsible official must provide at least 45 calendar days for review and comment on the Notice of Intent. The responsible official must consider comments received in response to the Notice of Intent and determine if there is a need to adjust the scope of the proposed revision.

(e) NEPA documentation. An appropriate environmental document prepared in accordance with NEPA procedures must accompany the proposed revision of a land and resource management plan. The responsible official must give the public notice and an opportunity to comment on the NEPA document for at least 90 calendar days. Following public comment, the responsible official must oversee preparation of final documents in accordance with NEPA procedures.

(f) Objections. Following completion of NEPA procedures, any person may file an objection to the proposed revision and initiate the objection process under § 219.32.

(g) Effective date. The responsible official may make a decision to approve a plan revision after the conclusion of the 30-day period provided to file an objection in § 219.32.

(h) Revision schedule. Within 1 year of the effective date of this rule, the Chief of the Forest Service must establish a schedule for completion of the revision process for each land and resource management plan utilizing the rules of this subpart.

§ 219.10 Site-specific decisions and authorized uses of land.

(a) Site-specific decisions. Subject to valid existing rights, applicable statutes, and to the extent appropriate and practicable, the responsible official shall follow the planning requirements of this subpart to make site-specific decisions. A site-specific decision must be consistent with the decisions within the applicable land and resource management plan. If a proposed site-specific decision is not consistent with the applicable land and resource management plan, the responsible official may modify the proposed decision to make it consistent with the land and resource management plan, subject to valid existing rights and statutory requirements; reject the proposal; or, if required by law or justified by projected short-term, long-term, and cumulative effects, amend the land and resource management plan to permit the proposal.

(b) Authorized uses of National Forest System land. At the time of their issuance, permits, contracts, and other instruments authorizing the use and occupancy of National Forest System lands must be consistent with the land and resource management plan. When an amendment or revision to a land and resource management plan is proposed, the responsible official must take into consideration the possible effects on occupancy and use already authorized through permits, contracts, or other instruments. Subject to valid existing rights or other statutory requirement, or unless expressly exempted by the plan, authorizations for occupancy and use within the plan area must be made consistent with any changes made to the applicable land and resource management plan. In a plan amendment or revision decision document, the responsible official may exempt activities or uses authorized by existing permits, contracts, or other instruments from application of new or modified plan decisions provided that, subject to valid existing rights, the environmental effects of the authorized use do not prevent the achievement of the desired condition described by the land and resource management plan. Otherwise, the responsible official, through the decision document accompanying a land and resource management plan amendment or revision, must establish a schedule for bringing preexisting authorized occupancy and use into compliance with new or modified plan decisions.

§ 219.11 Monitoring and evaluation.

Monitoring and evaluation requirements are designed to assess the effectiveness of management actions in accomplishing goals, objectives, and desired conditions. Monitoring and evaluation aids in the identification of topics of general interest or concern, the development of assessments, and in the amendment or revision of land and resource management plans or in the selection of site-specific projects.

(a) Monitoring and evaluation requirements. The monitoring strategy for a land and resource management plan must include identification of the actions, effects, or resources to be measured; the frequency of measurement; and sampling protocols. The responsible official shall ensure that monitoring information is used to determine:

(1) If site-specific actions are completed as specified in applicable decision documents;

(2) If the aggregated outcomes and effects of completed and ongoing actions are sustainable and are achieving or contributing to the achievement of desired conditions; and

(3) If key assumptions underlying plan decisions in the land and resource management plan remain valid.

(b) Coordination. Monitoring and evaluation should be coordinated and, to the extent practicable, conducted jointly with other federal agencies, state, local, and tribal governments, scientific and academic communities, or other interested parties. In addition, the responsible official must provide appropriate opportunities for the public to be involved in monitoring and evaluation as well as utilize scientists in monitoring and evaluation as described in § 219.22(c).

(c) Project monitoring. Monitoring and evaluation, if required in conjunction with a site-specific project, must be described in the project decision document. In addition, subject to valid existing rights, a project shall not be authorized unless there is a reasonable expectation that adequate funding will be available to complete any required monitoring and evaluation.

(d) Monitoring and evaluation report. The Forest or Grassland Supervisor must prepare an annual monitoring and evaluation report for the plan area within 6 months following the end of the fiscal year. The report must be filed with the land and resource management plan documents (§ 219.30), and it must include the following components:

(1) A list or reference to monitoring required by the land and resource management plan;

(2) A summary of the results of monitoring performed during the preceding fiscal year;

(3) A description of the trend(s) toward achieving goals or desired conditions and sustainability from accumulated actions;

(4) Identification of topics of general interest or concern (§ 219.4) arising from monitoring and evaluation; and

(5) A list of amendments, revisions, and summary of appropriate outcomes, products and services, and budgetary trends related to the achievement of desired conditions.

(e) Monitoring and evaluation of ecological sustainability. Monitoring and evaluation are crucial components in the achievement of ecological sustainability. A monitoring program must be developed to evaluate the effectiveness of maintaining or restoring ecosystem integrity and preserving future management options. Monitoring should be based on conceptual models of ecological systems being managed, key ecosystem processes including disturbance processes, and individual ecosystem components and the

relationships among those components. Monitoring and evaluation of ecological sustainability must:

(1) Develop methods of selecting and measuring indicators of ecological integrity and designate critical values that would trigger reviews of and possible amendments to goals, objectives, standards, or guidelines. Critical values should include identification of the spatial and temporal scales over which they are to be measured.

(2) Determine the status and trend of focal species and species at risk:

(i) The choice of monitoring objectives and methodology for focal species and species at risk is based upon a variety of factors which includes the degree of risk to the species, the degree to which a species' life history characteristics lend themselves to monitoring, the reasons that a species is included in the list of focal, at risk, or demand species, and the strength of association between habitat and population dynamics. The reasons for selection of monitoring objectives and methodology must be documented as part of the monitoring program.

(ii) Habitat conditions and trends must be monitored for selected focal species and species at risk. Habitat conditions should include all conditions necessary to support the species, not just vegetative components of habitat.

(iii) Actual estimates of population status and trend are appropriate when the risk of local or broader extirpation is high or there is high uncertainty about the habitats and conditions needed for species viability. In these cases, monitoring of population status should include a combination of efficient and reliable population sampling and studies to evaluate the species' habitat relationships and the effects of habitat manipulation. In cases where these ongoing monitoring efforts result in thorough understanding of the relationships of habitat to species distribution, abundance, and demographics, and where habitat is a primary factor influencing species population dynamics, monitoring may shift such that species status is inferred primarily from habitat monitoring rather than being solely based on direct population measures.

(iv) For species for which the risk of local or broader extirpations is not high, an array of monitoring objectives and methods may be appropriate. These may include the use of population occurrence and presence/absence data, using population indices to track relative population trends, or inferring population status from habitat conditions. Where habitat information is relied upon to provide inference to population status, the relationship of population to habitat must be understood well enough to provide data appropriate to the reason for which the species is being monitored.

(3) Determine the status and trend of other selected physical and biological indicators of ecological integrity. Document the reasons for selection of monitoring objective and methodology for these indicators.

(4) Validate that selected focal species and other selected indicators of ecological integrity provide reliable information about the status and integrity of the ecological system in which they occur.

(5) Determine the effectiveness of actions in providing desired conditions for selected demand species.

(6) Provide an overall evaluation of the effectiveness of management direction in conserving and maintaining or restoring ecosystem integrity, and in preserving future management options.

(f) Monitoring and evaluation of social and economic sustainability. Monitoring and evaluation of social and economic sustainability should include periodic review of national, regional, and local supply and demand for products, services, and values. Special consideration should be given to those products, services, and values that the Forest Service is uniquely poised to provide. Monitoring should improve the understanding of the National Forest System contributions to human wants and values and to social and economic sustainability.

Collaborative Planning for Sustainability

§ 219.12 Collaboration and cooperatively developed landscape goals.

(a) Collaboration. Collaboration in land and resource management planning enhances the ability of people to work together, build their capacity for stewardship, and achieve ecological, economic, and social sustainability. The responsible official, functioning as a leader, convener, facilitator, or participant, as appropriate, should foster positive relationships with people interested in and/or affected by the management of the National Forest System lands, as well as with other federal agencies and state, local, and tribal governments that wish to participate in defining the future of the National Forest System. The responsible official should provide frequent opportunities for citizens and organizations to participate openly and meaningfully, beginning at the early stages of the planning process. In undertaking planning, the responsible official should consider pertinent information from other sources and activities on other lands and recognize the distinct roles, jurisdictions, and relationships of interested and affected governments, organizations, groups, and individuals subject to applicable laws and regulations. The responsible official has full discretion to determine how and to what extent to use the collaborative processes outlined in §§ 219.12 through 219.18.

(b) Cooperatively developed landscape goals. (1) Using information from broad-scale assessments or other available information, the responsible official should seek to initiate or seek to join on-going collaborative efforts to develop or propose landscape goals for ecological units that may be associated with National Forest System lands. The responsible official and those involved in planning should invite and encourage others to engage in the collaborative development of landscape goals. During this collaborative effort, responsible officials, planners, and managers should strive to communicate and foster understanding of the nation's declaration of environmental policy as set forth in section 101(b) of the National Environmental Policy Act (42 U.S.C. 4321–4347, as amended) which states that it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

(v) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vi) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(2) The responsible official should consider cooperatively developed landscape goals, whether initiated by the Forest Service or others, within the framework for planning as a topic of general interest or concern (§ 219.4).

§ 219.13 Coordination among federal agencies.

The responsible official must seek to provide early and continuous coordination with appropriate federal agencies and must provide opportunities for other interested or affected federal agencies to:

(a) Participate in the identification of topics of general interest or concern and formulation of proposed actions that may affect or influence programs;

(b) Contribute to the streamlined resolution of any inconsistencies among federal agency policies, resource management plans, or programs; and

(c) Develop, where appropriate and practicable, joint resource management plans.

§ 219.14 Involvement of state and local governments.

The responsible official must recognize the jurisdiction, expertise, and role of state and local governments as regulators, land managers, and representatives of state constituencies and local communities interested in or affected by uses of the National Forest System. Accordingly, the responsible official must provide opportunities for involvement of state and local governments in the planning process, including opportunities to participate in the identification of topics of general interest or concern relating to the plan area.

§ 219.15 Interaction with American Indian tribes and Alaska Natives.

(a) The Forest Service shares in the Federal Government's overall trust responsibility for federally recognized American Indian tribes and Alaska Natives.

(b) The responsible official must recognize the government-to-government relationship between American Indian or Alaska Native tribal governments and the Federal Government.

(c) The responsible official must consult with and invite American Indian tribes and Alaska Natives to participate throughout the planning process to:

(1) Assist in the early identification of treaty rights, treaty-protected resources, American Indian tribe trust resources, and other tribal concerns;

(2) Consider tribal data and resource knowledge provided by tribal representatives; and

(3) Consider tribal concerns and suggestions when making decisions.

§ 219.16 Relationships with interested individuals and organizations.

The responsible official must:

(a) Ensure that appropriate information is made available and that no one, including persons with diverse opinions and values, is deliberately excluded or denied participation in land and resource management planning;

(b) Encourage participants to work collaboratively and directly with one another to improve understanding;

(c) As appropriate and necessary, identify and consult with a broad spectrum of individuals and entities who can provide information about current and historic public uses within an assessment or plan area, about the location of unique and sensitive resources, as well as identify values and cultural practices related to topics of general interest or concern in the plan area; and

(d) Consult with scientific experts and other knowledgeable persons, as appropriate and necessary, in the conduct of planning activities.

§ 219.17 Interaction with private landowners.

Consideration of the pattern and distribution of land ownership in assessment and plan areas is critical. In order to identify appropriate actions and evaluate possible effects, the responsible official must seek to engage those who have control or authority over lands adjacent to or within the external boundaries of national forests or grasslands in the consideration of available information and potential conditions and activities on the adjacent lands that may affect management of National Forest System lands.

§ 219.18 Role of advisory groups and committees.

(a) Advisory groups. Advisory groups or boards can provide an immediate, representative, and predictable structure within which public dialogue can occur so that Forest Service relationships with a broad and dispersed community of interests can be efficiently maintained.

(b) Use of advisory committees. An advisory committee may be used to assist the responsible official in determining whether there is a reasonable basis for action to address a topic of general interest or concern. An advisory committee is not needed for each national forest or grassland; however, each Forest or Grassland Supervisor must have access to an advisory committee capable of addressing local conditions and topics of general interest or concern. Forest and Grassland Supervisors may request establishment of advisory committees and recommend members to the Secretary of Agriculture. Advisory committees used by other agencies also may be utilized through proper agreements.

Ecological, Social, And Economic Sustainability

§ 219.19 Ecological, social, and economic sustainability.

Achievement of ecological, social, and economic sustainability is the overall goal for management of National Forest System land. To achieve sustainability, the first priority for management is the maintenance and restoration of ecological sustainability to provide a sustainable flow of products, services, and other values from these lands consistent with the laws and regulations guiding their use and enjoyment by the American people.

§ 219.20 Ecological sustainability.

To achieve ecological sustainability, it is necessary to maintain and restore ecosystem integrity. Sustaining the integrity of ecological systems increases their resilience to natural disturbance events, allows renewal following use or degradation, and helps to preserve options for future generations.

(a) Ecological information and analysis. To maintain and restore ecological sustainability, the collection and analysis of information on ecosystem composition, structure, and processes at a variety of spatial and temporal scales is necessary. These include geographic scales such as bioregions and watersheds, scales of biological organization such as communities and species, and temporal scales ranging from months to centuries. Some ecological measures, such as landscape diversity, are meaningful only when information is collected and analyzed at large spatial scales. For other measures, such as species diversity, it may be appropriate to collect and analyze information at more than one scale, with analysis at each scale influencing and/or incorporating the analysis done at other scales. Information and analyses regarding ecological sustainability may be identified, obtained, or developed through a variety of mechanisms, including broad-scale assessments and local analyses (§ 219.5), and documents prepared as required by NEPA procedures. As appropriate to the scale of the analysis, information and analyses, must include the following:

(1) The current biological and physical characteristics of ecosystems, such as plant and animal species, the

composition, structural stages, and landscape distribution of major vegetation types, soil condition, air and water quality, stream channel morphology, and instream flows.

(2) The principal ecological processes that influence the characteristic structure and composition of an area. This includes the intensity, frequency, and magnitude of natural disturbance regimes, occurring at the multiple geographic and temporal scales.

(3) The effects of human activities, distinguishing activities prior to European settlement, which had an integral role in the landscape for a long period of time, from activities after European settlement, many of which are of a type, size, and rate that were not typical of disturbances under which native plant and animal species and ecosystems developed.

(4) Estimates of the historical range of variability of ecological conditions, which should include an analysis of the differences over time in the occurrence of key attributes of ecological systems, and should identify those conditions that occurred more frequently than others. Estimates must be made for a specified period of time and include the effects of natural and human disturbance regimes prior to European settlement. Current conditions must be compared to the distribution of historical conditions prior to European settlement to develop insights about the current status and integrity of ecosystem components.

(5) A comprehensive status of ecosystem components and the contribution of National Forest System lands to ecosystem integrity, including species viability, based on consideration of all lands within the area under analysis.

(6) Identification of areas that may serve as reference landscapes, which collectively should reflect the full range of ecological composition, structure, and processes.

(7) Identification of indicators of ecosystem integrity, which must include focal species and species at risk, and also may include other physical and biological indicators. In general, the indicators should be consistent across different scales of analysis.

(i) Focal species. Focal species are used as surrogate measures in the evaluation of ecological integrity, including the diversity of native and desired non-native species. The key characteristic of a focal species is that its status and trend provide insights to the integrity of the larger ecological system to which it belongs. Individual species, or groups of species that use habitat in similar ways or that perform similar ecological functions, may be identified as focal species because they serve an umbrella function in terms of encompassing habitats needed for many other species, play a key role in maintaining community structure or processes, are sensitive to the changes likely to occur in the area, or otherwise serve as an indicator of ecological integrity. Also, certain focal species may be identified for the purpose of evaluating ecological conditions needed to provide for the viability of some other species. Collectively, the set of focal species must represent the range of environments within the area being analyzed.

(ii) Species at risk. Species at risk include endangered, threatened, candidate, proposed, and sensitive species, and species for which significant local reductions in distribution or density are concerns.

(iii) Other physical and biological indicators. The status and trend of other physical or biological indicators, such as measures of air or water quality, soil conditions, fire and water flow regimes, the prevalence of invasive or noxious species, and the variety, distribution, and productivity of forest and grassland ecosystems, may be used to evaluate ecological integrity.

(8) An evaluation of ecosystem integrity, using measures of species viability and the condition of other indicators including analysis at appropriate spatial and temporal scales and the cumulative effects of human and natural disturbances.

(i) Species viability. Analyze viability of each species known to be at risk. For all other species, including those species for which there is little information, focal species are to be used as surrogates in the evaluation of conditions needed to maintain viability. This requires analysis of viability for each focal species identified for the purpose of evaluating ecological conditions needed to provide for the viability of other species. As part of the viability analysis, identify risks to the viability of species and identify ecological conditions needed to maintain viability over time. In analyzing viability, recognize the level of knowledge available about species, their habitats, and the dynamic nature of ecosystems. When detailed knowledge is available, an evaluation of demographic, genetic, and other risk factors should be used to evaluate viability. When information gaps exist, reliance on general conservation principles and expert opinion may be appropriate. However, if risks to viability are considered to be high, collection and analysis of additional information, commensurate with risk levels, may be necessary.

(ii) Other measures of ecosystem integrity. Analyze information regarding focal species other than those being used solely as surrogates for viability, and other physical and biological indicators. As part of this analysis, highlight risks to ecosystem integrity and identify ecological conditions needed to maintain or restore integrity over time.

(9) Identification of demand species, which are those plant or animal species of high social, cultural, or economic value. Evaluate their status in the area being analyzed. As part of this analysis, document cumulative effects and identify ecological conditions needed to maintain desired levels of these species over time.

(10) Acknowledgment of incomplete information, uncertainty, and the inherent variability of ecological systems.

(b) Decisions. The responsible official must make decisions that provide for ecosystem integrity at the appropriate planning level. Decisions made at subsequent levels must be consistent with higher-level decisions. Subject to valid existing rights and other statutory requirements, land and resource management plan and site-specific decisions must maintain or restore ecosystem integrity, including species viability, and must:

(1) Be based on the application of the best available scientific information and analysis, including the information and analysis described in paragraph (a). This includes analysis of cumulative effects and acknowledgment of incomplete information, scientific uncertainty, and variability that is inherent in complex ecological systems.

(2) Provide for maintenance or restoration of the ecosystem composition, structure, and processes which are characteristic of an area over time and space.

(3) Provide for maintenance of the biological and physical components of ecosystems within the historical range of variability, except as provided in paragraph (b)(3)(iv).

(i) In situations where ecological conditions are currently within the historical range of variability, results of management actions on composition, structure, and processes should remain within that range, and decisions should strive to maintain the more likely conditions within the range.

(ii) Where current ecological conditions fall outside the historical range of variability, decisions must not shift those conditions further from the historical range of variability, and

should provide for restoration towards likely states within that range.

(iii) As one means of remaining within or returning to conditions that fall within the historical range of variability, goals, objectives, standards, and guidelines should be based on an understanding and consideration of natural disturbance processes that led to the characteristic structure and composition of these systems, including the intensity, frequency and magnitude of those disturbance regimes.

(iv) Where the use of the historical range of variability to set goals and objectives, and/or disturbance processes to guide management actions, would result in future conditions that are judged to be ecologically and/or socially unacceptable; or where the historical range of variability or disturbance processes are poorly understood; or where ecosystems have been altered to the extent that it is not possible to return to conditions within the historical range; other scientifically credible approaches may be used to maintain or restore ecosystem integrity. The scientific basis for such alternative approaches, and the fundamental differences from an approach based the historical range of variability and disturbance processes must be fully documented.

(4) Preserve options so that a range of future stewardship choices will be available.

(5) Designate appropriate reference landscapes to serve as benchmarks and to evaluate the effects of actions.

(6) Provide for the protection and/or restoration of soil and water resources, including, but not limited to, coastal waters, estuaries, groundwater, streams, stream banks, shorelines, lakes, wetlands, riparian areas, floodplains, and unstable soils, and comply with applicable Clean Water Act requirements. Identify current and foreseeable future Forest Service consumptive and non-consumptive water uses and quantities, and the water rights needed to maintain or restore watershed integrity, including instream flow needs.

(7) Provide for the protection and/or restoration of air resource values, including visibility, from human-caused air pollution impacts to the extent possible given variables beyond the control of the Forest Service.

(8) Provide for ecological conditions such that there is a high likelihood of maintaining viability of native and desired non-native species over time within the plan area, except as provided in paragraph (b)(8)(iv). To meet this requirement, the following points must be addressed in plan and site-specific decisions unless otherwise specified:

(i) All identified limiting factors for species for which viability or reduction in distribution or density are concerns, including but not limited to the quantity, quality, and distribution of habitats and ecological processes needed to maintain viability, to prevent listing a species as threatened or endangered under the Endangered Species Act, and to prevent local or broader extirpations.

(ii) Some species are not naturally well-distributed and therefore plan decisions for those species should recognize and reflect natural distribution patterns. A species is well-distributed when individuals can interact with each other in the portion of the species range that occurs within the plan area.

(iii) When a plan area occupies the entire range of a species, provide for viability of the species and its component populations throughout that range. When a plan area encompasses one or more naturally disjunct populations of a species, provide for viability of each population. When a plan area encompasses only a part of a population, contribute to viability of that population by maintaining ecological conditions for the population well-distributed throughout its range within the plan area.

(iv) When a plan area occupies only part of the range of a species, and management of lands outside the National Forest System lands precludes attainment of a high likelihood of viability for that species, contribute to viability by providing ecological conditions for the species well-distributed throughout its range within the plan area.

(v) Provide for structural and functional redundancy of habitat as necessary to buffer disturbances characteristic of dynamic systems.

(9) Include, at the appropriate and applicable scale, non-discretionary, reasonable, and prudent measures and associated terms and conditions contained in biological opinions issued under 50 CFR Part 402. Provide rationale for adoption or rejection of discretionary conservation recommendations in biological opinions, as well as objectives identified for Forest Service action as part of recovery plans developed under the Endangered Species Act.

(10) Provide for ecological conditions such that Forest Service actions do not contribute to the need to list species under the Endangered Species Act. This may include decisions based on consideration of recommendations in conservation agreements with the Fish and Wildlife Service or National Marine Fisheries Service that provide the basis for not needing to list a species. In some situations, conditions or events beyond the control or authority of the Forest Service may limit the Forest Service's ability to prevent the need for federal listing or prevent the extirpation of a species from a plan area. However, in these situations, consideration should be given to whether the National Forest System lands have a unique opportunity to provide a disproportionately greater contribution, compared to other lands, of the ecological conditions needed to help reduce the likelihood of species becoming listed under the Endangered Species Act or to contribute to the recovery of listed species.

(11) Provide for ecological conditions needed to achieve sustainable use levels of demand species for hunting, fishing, subsistence, non-consumptive, and other uses, consistent with objectives for ecological integrity. Develop objectives for these species in cooperation with other federal agencies, states, American Indians, Alaska Natives, and interested individuals and organizations, consistent with the Sikes Act and other applicable laws.

(c) Monitoring and evaluation. Monitoring and evaluation requirements are set out in section § 219.11(e).

§ 219.21 Social and economic sustainability.

(a) Achieving social and economic sustainability. The management of National Forest System lands promotes economic and social sustainability through involvement of interested and/or affected people, development and consideration of relevant social and economic information, and by providing a range of products, services, and values.

(b) Social and economic analyses. Social and economic analyses are important in gaining understanding of the relationships among ecological, social, and economic sustainability. Social analyses address human life-styles, attitudes, beliefs, values, demographic characteristics, and land-use patterns of human communities and their capacity to adapt to changing conditions. Economic analyses identify and evaluate an area's economy in the context of national and regional supply, demand, and private and public values. In conducting broad-scale assessments or local analyses, the responsible official should consider the best available information to consider social and economic factors such as:

(1) Demographics, life style preferences, cultural norms, economic

measures, land uses, cultural and American Indian tribe land settlement patterns, social and cultural values, and community health;

(2) Opportunities to provide social and economic benefits to communities through natural resource restoration strategies;

(3) Current demographics related to direct, indirect, and induced effects on income, population, and industry employment, and the ability of communities to adapt to change;

(4) The relationship between these variables and the uses, products, and services provided by the National Forest System;

(5) Economic estimates of the National Forest System contribution to present and future society benefits (both quantitative and qualitative);

(6) The financial and opportunity costs derived from market and non-market use; and

(7) The presence of natural resources and resource capital investment in National Forest System lands.

(c) Social analyses.

(1) Social analyses may rely upon quantitative, qualitative and participatory methods for gathering and analyzing data.

(2) Social analyses are often undertaken at varying spatial scales to improve understanding of the effects of internal and external social factors within the larger context within which federal lands are located.

(3) A social analysis should describe potential consequences to communities and regions from land management changes in terms of capital availability, employment opportunities, wage levels, local tax bases, federal revenue sharing, the ability to support public infrastructure and social services, human health and safety, and other factors as necessary and appropriate.

(d) Economic analysis.

(1) An economic analysis may include a quantitative, qualitative, and historical analysis of the effects of National Forest System management on national, regional, and local economies.

(2) Economic analysis is undertaken at varying spatial scales and should include the long-term costs and benefits of management activities and their contribution to net public benefits and regional and community well being.

(3) An economic analysis includes an analysis of national and regional economic trends (both supply and demand), variation in product prices, and changes in public values.

(e) Regional social and economic analyses. Regional analyses may include a quantitative and qualitative analysis of the economic and social history of the region; the culture of the groups and communities and how they have changed over time; the organization and leadership of local communities; the institutional environment, including the pattern of land ownership, related conservation and land use policies at the state and local level, and existing opportunities for collaboration with other agencies, businesses, organizations, landowners; and other dimensions of social life.

(f) Local social and economic analyses. Local analyses should provide refinement of larger-scale analyses and of regional data and information as related to the area under consideration. A local analysis may provide a context for other analyses. The local analysis should include participatory analyses which engage people and communities to enhance understanding and development of realistic expectations.

(g) Risk and vulnerability analyses. Risk and vulnerability analyses assess the vulnerability of communities from changes in ecological systems as a result of natural succession or potential management actions. Risk may be considered for geographic, relevant occupational, or other related communities of interest. Resiliency and community capacity should be considered in a risk and vulnerability analysis.

(h) Implementation. Analyses and decisions regarding social and economic sustainability are to be made at the appropriate planning level. Decisions made at subsequent levels must be consistent with higher-level decisions. Existing data (*e.g.*, census data, demographic information, employment statistics, and other economic information) often provide a useful foundation for social and economic analyses, but, supplemental information may be needed.

(i) Monitoring. Requirements for monitoring and evaluation of social and economic sustainability are set out in § 219.11(f).

The Contribution of Science

§ 219.22 The role of assessments, analyses, and monitoring.

Broad-scale assessments and local analyses, in concert with monitoring and evaluation of large and small landscapes are critical to gaining understanding of the relationships of ecological, social, and economic environments. Scientists, knowledgeable of the plan area and working with others, improve understanding and aid the identification of landscape goals and actions needed to achieve sustainability.

(a) Broad-scale assessments. Each broad-scale assessment must be lead by a Chief Scientist. If the Forest Service is conducting or leading a broad-scale assessment, the Deputy Chief of Research and Development must select the Chief Scientist. When appropriate and practicable, a responsible official must provide for independent, scientific peer review of the findings and conclusions originating from a broad-scale assessment. Peer review may be provided by scientists from the Forest Service, other federal, state, or tribal agencies, or other institutions.

(b) Local analyses. A responsible official may include scientists in periodic technical reviews of local analyses and field reviews of the design and selection of subsequent site-specific projects.

(c) Monitoring. (1) The responsible official must include scientists in the design and evaluation of monitoring and inventory strategies and protocols. Additionally, the responsible official must provide for an independent peer review by scientists of the monitoring program on at least a biennial basis to review monitoring and inventory strategies, to validate adherence to appropriate protocols and methods in collecting and processing of monitoring and inventory samples and to validate that data are summarized and interpreted.

(2) When appropriate and practicable, the responsible official should include scientists in the review of monitoring data and analytical results to determine trends relative to ecological, economic, or social sustainability.

§ 219.23 The participation of scientists in planning.

Scientists may participate in planning by:

(a) Assisting the responsible official in understanding and applying relevant scientific information, including verifying that the best available scientific information and analysis is considered as provided in (§ 219.24);

(b) Estimating the risks and uncertainties that could result from resource management options and identifying and describing how risks associated with plan decisions may be mitigated and how uncertainties might be reduced through additional research;

(c) Providing an evaluation of the significance of new information not yet independently peer-reviewed, such as results of ongoing or recently completed research studies, management reviews, or monitoring and evaluation and the relevance to existing plan decisions; and

(d) Assisting in the identification of topics of general interest or concern and

analyses to help understand the information needed for effective planning. Scientists may also be involved in developing strategies for gathering, synthesizing, and integrating and evaluating information on complex issues, particularly those having broad geographic and community interest. Scientists may be employed by the Forest Service or employed by other federal, state, local, or privately owned entities.

§ 219.24 Science consistency evaluations.

(a) The responsible official must ensure that plan decisions are consistent with the best available scientific information and analysis. The responsible official may use a science advisory board (§ 219.25) to assist in determining whether information gathered, evaluations conducted, or analyses and conclusions reached in the planning process are consistent with the best available scientific information and analysis. If the responsible official decides to use a science advisory board, the board and the responsible official are to jointly establish criteria for the science advisory board and the responsible official to use in reviewing the consistency of proposed plan decision(s) to determine consistency with the best available scientific information and analysis.

(b) The science advisory board is responsible for organizing and conducting a scientific consistency evaluation to review whether :

(1) If relevant scientific (ecological, social, or economic) information has been considered by the responsible official in a manner consistent with current scientific understanding at the appropriate scales;

(2) If uncertainty of knowledge has been recognized, acknowledged, and adequately documented; and

(3) If the level of risk in achievement of sustainability is acknowledged and adequately documented by the responsible official.

(c) If substantial disagreement among members of the science advisory board or between the science advisory board and the responsible official is identified during a science consistency evaluation, a summary of such disagreement should be noted in the appropriate environmental documentation within Forest Service NEPA procedures.

§ 219.25 Science advisory boards.

(a) Regional science advisory boards. The appropriate Forest Service Research Station Director(s) must establish a science advisory board to be available to monitor the implementation of plan decisions for National Forest System lands. The area covered by a board may include more than one Regional Office of the National Forest System, but each Regional Forester must have access to an advisory board. Board membership must include scientists representing a broad range of natural resource disciplines including the physical and biological sciences, economics, and sociology. Regional science advisory board tasks may include, but are not limited to:

(1) Evaluating significance and relevance of new information related to current plan decisions, including the results of monitoring and evaluation programs; and

(2) Evaluating science consistency as described in § 219.24.

(b) National science advisory board. To provide scientific guidance on issues of national significance, the Chief of the Forest Service must establish and appoint the chairperson and members to a national science advisory board. The board is to consist of distinguished scientists representing a broad range of natural resource disciplines including the physical and biological sciences, economics, and sociology.

(c) Work groups. With the concurrence of Forest Service officials and subject to available funding, both regional and national science advisory boards may convene work group of scientists and/or others to study particular issues and make recommendations to the advisory boards.

Special Considerations

§ 219.26 Identifying and designating suitable uses.

National forests and grasslands are available for a wide variety of public uses; unless such uses are statutorily prohibited, are found to be incompatible with the National forest mission and resource management goals and objectives, or the lands are deemed to be not suitable for a particular use. As land and resource management plans are amended or revised, the responsible official must determine the suitability of various uses within the affected plan area. The identification of land that is suited for certain uses, such as recreation, timber production, livestock grazing, or other uses, should be based on assessments, other analyses, monitoring and evaluation results, or other information. Planning documents should display the land available for various uses in areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions.

§ 219.27 Special designations.

Special designations may include, but are not limited to, wilderness, critical watersheds, research natural areas, geological areas, roadless areas, unroaded areas, botanical areas, scenic by-ways, national scenic areas, national recreation areas, national natural landmarks and monuments; and wild, scenic, and recreation rivers. The Forest Service identifies special designations or recommends special designation to higher authorities through the amendment or revision process.

(a) Wilderness areas. Unless federal statute directs otherwise, all roadless, undeveloped areas that are of sufficient size as to make practicable their preservation and use in an unimpaired condition must be evaluated for wilderness designation during the land and resource management plan revision process. Roadless areas may be evaluated at other times as determined by the responsible official.

(b) Reconciliation of statutory requirements. Where statutes designating special areas within the National Forest System require planning beyond that required for land and resource management plans, the goals, objectives, standards, or guidelines in special area plans must be incorporated into the land and resource management plan as plan decisions.

§ 219.28 Determination of land suitable for timber removal.

(a) For purposes of land and resource management planning with respect to timber removal, there are two classifications of land—land not suited for timber production and land where timber harvest is permitted.

(b) The responsible official must identify lands within the plan area that are not suitable for timber production. These lands and their classification as not suitable for timber production must be reviewed during the plan revision process, or as otherwise prescribed by law. Lands not suited for timber production include:

(1) Lands where timber harvest would violate statute, Executive Order, or regulation and those lands that have been withdrawn from timber harvest by the Secretary of Agriculture or the Chief of the Forest Service;

(2) Lands that do not meet the definition of forested land. For the purposes of this section, forested land means land not currently identified for non-forest use and of which at least 10 percent is occupied by forest trees or which formerly had such tree cover. Forest trees are those woody plants having a well-developed stem and are

usually more than 12 feet in height at maturity;

(3) Lands where technology is not available for conducting timber harvesting without causing irreversible damage to soil productivity or ecosystem integrity;

(4) Lands where there are no reasonable assurances that they could be adequately reforested within 5 years of regeneration harvest; and

(5) Lands where the costs of timber production are not justified by the ecological, social, or economic benefits.

(c) The responsible official must identify lands within the plan area where timber harvest is permitted. For these lands, the responsible official must identify:

(1) Lands where timber production is an objective; and

(2) Lands where timber harvest is permitted to maintain or restore the ecological integrity of the land, to protect other multiple-use values, or to achieve the desired vegetation condition identified in planning documents.

(d) To achieve the desired conditions described in applicable land and resource management plan decisions, the salvage or sanitation harvest of timber is permitted on all National Forest System lands except on those lands where timber harvest is prohibited by law.

§ 219.29 Limitation on timber removal.

(a) The responsible official must estimate the amount of timber that can be sold annually in perpetuity on a sustained-yield basis from lands where timber production is identified as an objective. This estimate must be based on the yield of timber that can be removed consistent with achievement of the desired condition(s) identified in the land and resource management plan(s). In those cases where a national forest has less than 200,000 acres of forest land on which timber production is identified as an objective, two or more national forests may be combined for the purpose of estimating the sustainable yield amount.

(b) The responsible official must limit the sale of timber from the lands identified for timber production to a quantity equal to or less than the quantity which can be removed annually in perpetuity on a sustained-yield basis.

(c) If departure from the quantity of timber removal established in paragraph (b) is necessary to meet overall multiple-use objectives, the responsible official may establish an allowable sale quantity for the decade covered by the plan as a land and resource management plan objective based on the amount of timber removal estimated to be necessary to achieve desired conditions identified in the land and resource management plan, and may either:

(1) Sell a quantity of timber in excess of the annual allowable sale quantity as long as the average sale quantities of timber over the decade covered by the plan from lands to which the allowable sale quantity applies do not exceed the allowable sale quantity for the decade; or

(2) Sell a quantity of timber that exceeds the allowable sale quantity for any decade as long as the proposal to exceed the allowable sale quantity is fully disclosed to the public as part of the required evaluation for a proposed plan decision as described by this rule.

Planning Documentation

§ 219.30 Land and resource management plan documentation.

A land and resource management plan is a repository of documents that integrates and displays the goals, objectives, standards, guidelines, and other plan decisions that apply to a unit of the National Forest System. The land and resource management plan also contains maps, information resulting from monitoring and evaluation, including the annual monitoring and evaluation report, and other information relevant to how the plan area is to be managed. The land and resource management plan is a vision for the future that is clear, understandable, and readily available for public review. The set of documents that constitute a land and resource management plan is continually updated through amendment, revision, and routine maintenance and includes at a minimum the following:

(a) A summary of the land and resource management plan. The summary is a concise description of the various components of a land and resource management plan including desired conditions, management and use, and a description of the plan area and appropriate planning units within the plan area. The summary includes a brief description of the ecological, social, and economic environments within the plan area; aquatic and terrestrial components of watersheds and the overall strategy for their protection or restoration; the desired conditions of the lands and resources within the plan area; and actions to be taken to achieve desired conditions. The summary also includes appropriate maps, a description of the transportation system, utility corridors, land ownership patterns and proposed land ownership adjustments, charts, figures, photographs, and other information to enhance understanding.

(b) Display of public uses. The set of documents that comprise the land and resource management plan must display the specific or compatible uses (§ 219.26) of lands within the plan area such as recreation uses, mineral developments, and the transportation network of roads and trails for public use. The display must identify land classified suitable for timber removal and not suitable for timber production (§ 219.28), lands where timber harvest may be permitted to accomplish other resource objectives, and lands where timber production is an objective. The display also must describe the limitations on the removal of timber (§ 219.29) and the standards and guidelines for timber harvest and regeneration methods (§ 219.7(b)(3)).

(c) Plan decisions. The set of documents that comprise the land and resource management plan must clearly display the goals, objectives, standards, guidelines, and other decisions made at different geographic and temporal scales that apply to the plan area.

(d) Display of actions, outcomes, and projected products and services. The set of documents that comprise the land and resource management plan must also contain:

(1) An annually updated list or other display of proposed, authorized, and completed actions to achieve desired conditions within the plan area;

(2) A 2-year schedule of anticipated outcomes, products, and services based on a reasonable estimate of Forest Service budget and capacity to perform the identified program of work;

(3) An updated annually, 2-year summary of the actual outcomes, products, and services provided as a result of completed site-specific projects;

(4) A projected range of outcomes, products, and services for the next decade. These projections are estimates and as such often contain a high degree of uncertainty; they are intended to describe expected progress in fulfilling land and resource management plan goals, objectives, and desired conditions. The projections are to be updated during revision of each land and resource management plan; and

(5) A display of anticipated accomplishments and the span of time necessary to achieve the desired conditions described in the land and resource management plan. This display must be updated as appropriate to reflect changes in anticipated accomplishments or the time required for achieving desired conditions.

(e) Results of monitoring and evaluation. The land and resource management plan must document the monitoring to occur in the plan area and include the monitoring and evaluation report.

(f) Budgetary information. The land and resource management plan must display a summary of the unit's projected program of work, including costs for inventories, assessments, proposed and authorized actions, and monitoring. The projected program of work must be based on reasonably anticipated funding levels. The land and resource management plan documents must also include a description of the total current-year unit budget, funded actions, projections for future budgets over the next 2 years; and a display of the budget trends over at least the past 5 years. When budget allocations are received, the responsible official must compare the funds received with the unit's program of work. Budget information may be updated at any time, is not a proposed action subject to NEPA procedures, and does not require a land and resource management plan amendment or revision.

(g) Other components. A land and resource management plan must contain a list of materials, Forest Service policies, and decisions used in forming the plan decisions for the land and resource management plan, including, but not limited to, lists of previous decision and environmental documents, assessments, conservation agreements and strategies, biological opinions, inventories, administrative studies, and research.

§ 219.31 Maintenance of the plan and planning records.

(a) Each Forest or Grassland Supervisor must maintain a complete set of the planning documents that compose the land and resource management plan for the unit and ensure that the contents are complete and data are current. The land and resource management plan must be readily available to the public and, to the degree practicable, maintained on the Internet.

(b) The following administrative corrections and additions are not land and resource management plan amendments or revisions and do not require public notice or the preparation of an environmental document under NEPA:

(1) Corrections and updates of data and maps;

(2) Updates to activity lists and schedules as required by § 219.30(d)(1), (2), (3), and (5); and

(3) Corrections of typographical errors or similar non-substantive changes.

Objections and Appeals

§ 219.32 Objections to amendments or revisions.

(a) Any person may object to a proposed amendment or revision of one or more land and resource management plan decisions, except for a decision made by the Chief. An objection must be filed, in writing, with the reviewing officer who is the supervisor of the responsible official for the proposed amendment or revision. The objection must be filed within 30 days from the date that the Environmental Protection Agency publishes the notice of availability of the final environmental impact statement containing the amendment or revision in the **Federal Register**. For an amendment or revision not requiring the preparation of an environmental impact statement, the objection must be filed within 30 days of the publication, in a newspaper of record (36 CFR Part 215), of a public notice of the environmental assessment or categorical exclusion of the proposed amendment or revision.

(1) An objection must contain:

(i) The name, mailing address, and telephone number of the person filing the objection;

(ii) A statement of the information or decision(s) to which the person objects;

(iii) A statement describing the part or parts of the amendment or revision being objected;

(iv) A concise statement explaining why the responsible officials' pending decision should not be adopted; and

(v) A description of the objector's prior participation in the planning process for the amendment or revision.

(2) The responsible official must include a response to any objection filed with the decision document for the amendment or revision. The decision must be sent to the objecting party by certified mail, return receipt requested.

(3) The reviewing officer's decision regarding an objection is the final decision of the Department of Agriculture.

(b) Where the Forest Service is a party to a multi-agency decision subject to objection under this part, the responsible official may waive the objection procedures of this part in favor of an administrative review procedure of another participating federal agency, if the responsible official and the responsible official of the other agencies agree to provide a joint response to those who have filed for administrative review of the multi-agency decision. When a notice of intent is issued or re-issued for any such multi-agency planning efforts, the responsible official must identify in the notice of intent the administrative review process that will be used. In such cases, a notice must be issued by the responsible official which clearly states that the decision will not be subject to objection under this part, and must specify the administrative review procedures that will apply.

(c) Review of and final response to any objections must be based on the statutes, regulations, and policies applicable to the administration and management of the National Forest System, including when the objection procedures are waived under paragraph (b).

§ 219.33 Appeals of site-specific decisions.

If a person is not satisfied with a site-specific decision made by a responsible official, the person may appeal and request review of the decision through the Forest Service administrative appeal procedures described in 36 CFR Part 215.

Applicability and Transition

§ 219.34 Applicability.

The provisions of this rule are applicable to all units of the National Forest System as defined by 16 U.S.C. 1609.

§ 219.35 Transition.

On (the effective date of this rule), each responsible official must begin an orderly implementation of the requirements of this rule, as follows:

(a) The transition period begins upon the effective date of this rule and ends upon the completion of the revision process (§ 219.9) for each unit of the National Forest System. During the transition period, the responsible official must consider the best available scientific information and analysis to:

(1) Initiate and complete the revision process;

(2) Develop procedures related to sustainability as described in §§ 219.20 through 219.21;

(3) Supplement or complete an appropriate broad-scale assessment as described in § 219.5(a); and

(4) Implement the land and resource management plan.

(b) Existing land and resource management plans remain in effect until amended or revised under this rule including plans amended or revised within 1 year from the effective date of this rule as provided in paragraph (d).

(c) If a review of lands not suited for timber production (§ 219.28) is required before the completion of the revision

process, the review must take place as described by this rule, except as noted in paragraph (d) of this section.

(d) If a revision or an amendment of a land and resource management plan has been initiated under the 1982 (36 CFR Part 219, 1999 edition) planning rule, but not yet completed within 1 year from the effective date of this rule, the responsible official must complete the revision or amendment process as described by this rule. If a revision or amendment has been initiated under the 1982 planning rule and is completed within 1 year from the effective date of this rule, the responsible official is not required to use the amendment or revision process described by this rule for such amendment or revision.

(e) Within 3 years from the effective date of this rule, the responsible official must, subject to valid existing rights, and to the degree appropriate and practicable, make site-specific project decisions in conformance with §§ 219.3 through 219.10.

(f) When all units of the National Forest System, within a Forest Service Region, have completed the revision process (§ 219.9), the Regional Forester for that Region must withdraw the regional guide within 1 year. When a regional guide is withdrawn, the Regional Forester must identify the decisions in the regional guide that are transferred to a regional supplement of the Forest Service directive system (36 CFR Part 200.4) or to one or more land and resource management plans and give notice in the **Federal Register** of these actions.

(g) Within 3 years from the effective date of this rule, the responsible official must complete the first monitoring and evaluation report as described in § 219.11(d).

Definitions

§ 219.36 Definitions.

Definitions of the special terms used in this subpart are set out in alphabetical order in this section as follows:

Assessment or analysis area: The area included within the scope of a broad-scale assessment or local analysis.

Broad-scale assessment: A synthesis of current scientific knowledge, including a description of uncertainties and assumptions, to provide a characterization and comprehensive description of ecological, social, and economic components within an assessment area critical for understanding past and present conditions and projecting future trends which provides a foundation for the identification of additional or necessary information for policy discussions or decisions.

Candidate species: Species identified by the United States Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS), which are considered to be candidates for listing under the Endangered Species Act. A list of such species prepared by the USFWS and published in the **Federal Register**.

Conservation agreement: A formal agreement between the Forest Service and the USFWS and/or NMFS identifying management actions necessary to prevent the need to list species under the Endangered Species Act.

Demand species: Native and desired non-native species with high social, cultural, or economic values.

Desired condition: A statement describing a common vision for a specific area of land or type of land within the plan area. Statements of desired conditions include the estimated time required for their achievement. They also take into account the range of natural variability typical for the landscape, the uncertainty of natural disturbances, the effects of past management, the unique features or opportunities that the national forests and grasslands can contribute, and the human desires and uses of the land

Desired non-native species: Those species of plants or animals that are not indigenous to an area but which represent a significant, and usually remnant segment of a gene pool.

Disturbance processes: Actions, functions, or events that influence or maintain the structure, composition, or function of the terrestrial or aquatic components of ecosystems. Natural disturbances include, among others, drought, floods, wind, fires, insects, and pathogens. Human-caused disturbances include actions such as recreational use, livestock grazing, mining, road construction, timber harvest, land-use development, and the introduction of exotic species.

Diversity of plant and animal communities: The distribution and relative abundance of plant and animal species occurring within an area.

Ecological composition: The biological components of an ecological system, which are the foundation of diversity at the genetic, species, and landscape scales. Genetic diversity is the variation in inheritable characteristics within and among individual organisms and populations. Species diversity is the number and different kinds of species present in a given area. Landscape diversity is the variety of plant communities (including their identity, distribution, juxtaposition, and seral stage) and habitats evaluated at the landscape scale.

Ecological conditions: Components of the biological and physical environment that can affect ecological sustainability, the diversity of plant and animal communities, species viability, and the productive capacity of ecological systems. These could include aquatic and terrestrial habitats, roads and other structural developments, human uses, and invasive and exotic species.

Ecological sustainability: The maintenance or restoration of ecological system composition, structure, and function which are characteristic of a plan area over time and space, including but not limited to ecological processes, biological diversity, and the productive capacity of ecological systems.

Ecosystem: An interconnected community of plants and animals, including humans, and the physical environment within which they interact.

Ecosystem integrity: The completeness of an ecosystem that, at multiple geographic and temporal scales, maintains its characteristic diversity of biological and physical components, spatial patterns, structure, and functional processes within its approximate range of historic variability. These processes include disturbance regimes, nutrient cycling; hydrologic functions, vegetation succession, and species adaptation and evolution. Ecosystems with integrity are resilient and capable of self-renewal in the presence of the cumulative effects of human and natural disturbances.

Ecosystem structure: The biological and physical attributes that shape ecological systems; biotic attributes include population size, structure and range; foliage density and layering, snags, large woody debris or the size, shape and spatial relationships of cover types within a landscape; physical attributes include soil and geologic substrate variables, slope and aspect, or stream gradient.

Forest Service NEPA procedures: The Forest Service policy and procedures for implementing the National Environmental Policy Act (NEPA) and the Council on Environmental Quality regulations as described in Chapter 1950 of the Forest Service Manual and Forest Service Handbook 1909.15, Environmental Policy and Procedures The Handbook is published in the **Federal Register**.

Historical range of variability: The limits of change in composition, structure, and processes of the

biological and physical components of an ecosystem resulting from natural variations in the frequency, magnitude, and patterns of natural disturbance and ecological processes characteristic of an area before European settlement. Estimates are made for a specified period of time and include the effects of pre-European settlement human activities.

Local analysis: A characterization of the ecological, social, and economic components for various times and locations for a smaller area than that of a broad-scale assessment. Local analyses often tier to broad-scale assessments. Local analyses provide comprehensive descriptions of ecological system structure, process, and functions. The geographic area of a local analysis and its data resolution depend on the topics of general interest or concern being addressed. Like broad-scale assessments, local analyses represent a synthesis of current scientific knowledge including a description of uncertainties and assumptions; however, they also provide for the gathering of new information which can be used in the development of site-specific projects.

Native species: Those plant and animal species indigenous to the plan area or assessment area.

Plan area: The area of National Forest System lands covered by an individual land and resource management plan. The area may include one or more administrative units.

Productive capacity of ecosystems: The continuing productivity of an ecological system, including its ability to sustain desirable conditions such as clean water, fertile soil, riparian habitat, and viable populations of plants and animals; and to sustain desirable human uses; and to renew itself following disturbance.

Reference landscapes: Terrestrial and aquatic areas with high ecosystem integrity and within the historical range of variability and of sufficient size, where relevant disturbance and ecological processes occur and are generally unaffected by human activities.

Responsible official: The Forest Service line officer with the authority and responsibility to oversee the planning process and make decisions on proposed actions. For the purposed of this rule, a responsible official may include more than one line officer.

Roadless Areas: Undeveloped areas that meet minimum criteria for wilderness consideration under the Wilderness Act—Areas typically exceeding 5,000 acres that were inventoried during the Forest Service's formal Roadless Area Review and Evaluation (RARE II) process, and remain in a roadless condition through forest planning decisions. For roadless areas in the eastern United States, see FSH 1909.12, Chapter 7.11b. Designated roadless areas do not overlap with unroaded areas (See definition for unroaded area)

Salvage harvest of timber: The removal of dead trees or trees being damaged or killed by injurious agents other than competition, to recover value that would otherwise be lost.

Sanitation harvest of timber: The removal of trees to improve stand health and to reduce actual or anticipated spread of insects and disease.

Sensitive Species: Those species identified as sensitive under the Forest Service's sensitive species program, currently set out in the Forest Service Manual, Chapter 2670.

Species: Any native taxon of the plant or animal kingdom, including subspecies, distinct population segments, or designated evolutionarily significant units. Distinct population segments and evolutionarily significant units are consistent with regulations developed by the Departments of the Interior and Commerce to implement the Endangered Species Act.

Species viability: A species consisting of self-sustaining and interacting populations that are well distributed through the species' range. Self-sustaining populations are those that are sufficiently abundant and have sufficient genetic diversity to display the array of life history strategies and forms to provide high likelihood for their long-term persistence and adaptability over time.

Timber production: The sustained long-term and periodic harvest of wood fiber from National Forest System lands undertaken in support of social and economic objectives identified in one or more land and resource management plans. For purposes of this rule, the term timber production includes fuel wood.

Unroaded areas: Any area without the presence of a classified road (a road at least 50 inches wide and constructed or maintained for vehicle use). The size of the area must be sufficient and in a manageable configuration to protect the inherent values associated with the unroaded condition. Unroaded areas do not overlap with designated roadless areas.

Vegetation Management: Management actions that change the composition or structure of plant communities including, but not limited to timber harvest, mining, livestock grazing, and fire.

Watershed integrity: A watershed that maintains its characteristic diversity of biological and physical components, structure, and functional processes within its approximate range of natural variability. Watersheds with integrity display processes that manifest their characteristic structure, function, and composition. These processes include natural disturbance regimes, nutrient cycling, hydrologic functions, vegetation succession, and species adaptation and evolution. Watersheds with integrity are resilient and capable of self-renewal within the cumulative effects of human and natural disturbances.

Dated: September 28, 1999.

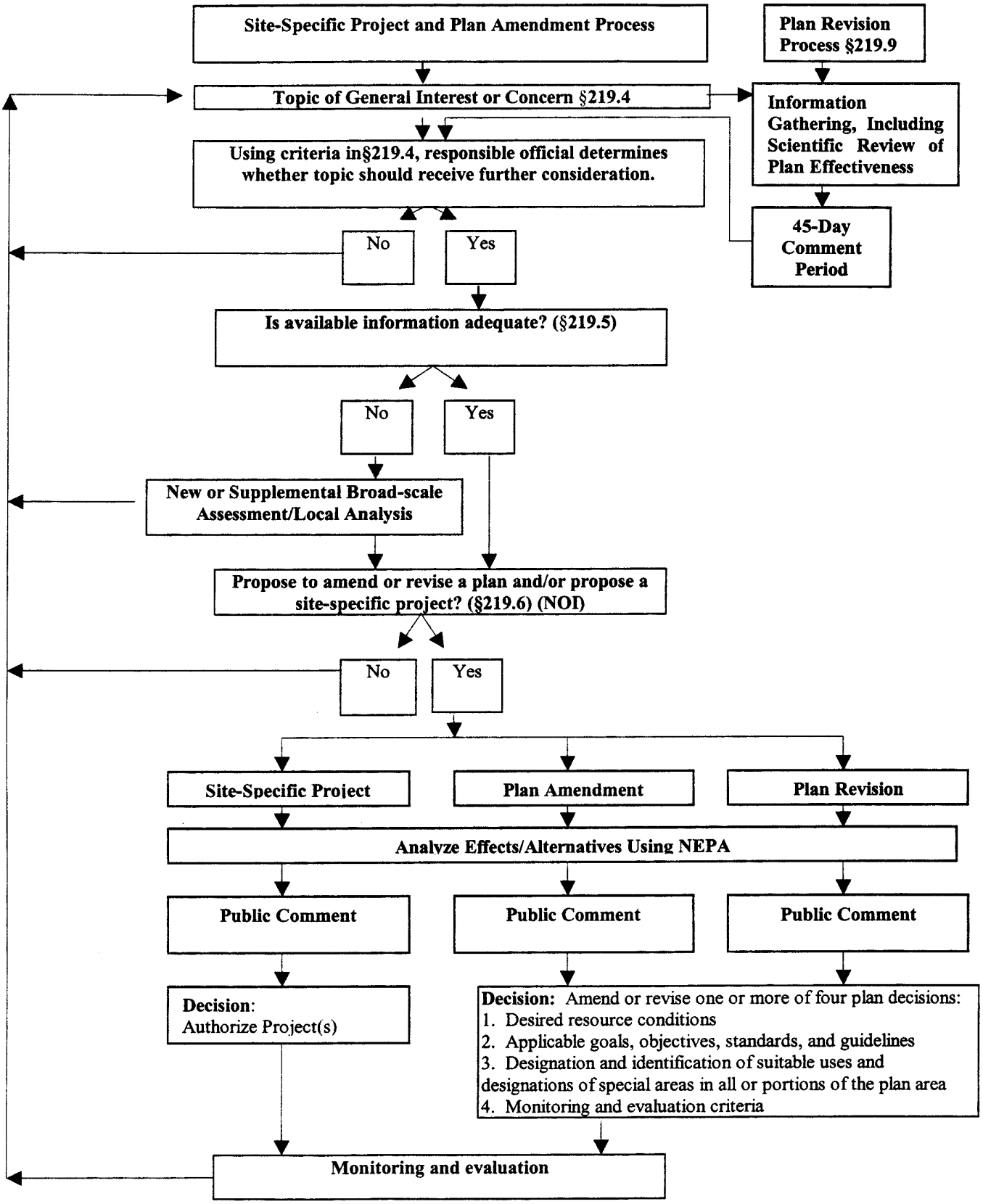
Mike Dombeck,

Chief, Forest Service.

Note: The following Appendix will not appear in the Code of Federal Regulations.

BILLING CODE 3410–11–P

APPENDIX A: PROPOSED PLANNING PROCESS



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Tuesday
October 5, 1999

Part III

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures, Labeling, and Certification Requirements for Electric Motors; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–RM–96–400]

RIN 1904–AA82

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures, Labeling, and Certification Requirements for Electric Motors.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Energy Policy and Conservation Act, as amended, 42 U.S.C. 6291–6317 (the Act or EPCA) establishes energy efficiency standards and test procedures for commercial and industrial electric motors. Today's final rule establishes regulations to implement these requirements, and to establish efficiency labeling and compliance certification requirements for motors, as directed by EPCA.

EFFECTIVE DATE: This rule is effective November 4, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 4, 1999.

ADDRESSES: For the availability of material incorporated by reference, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: The Department of Energy (DOE or Department) is incorporating by reference, test procedures and definitional information from the Institute of Electrical and Electronics Engineers, Inc. (IEEE), the National Electrical Manufacturers Association (NEMA), the CSA International (CSA),[1] and the International Electrotechnical Commission (IEC). These test procedures and definitional information are set forth in the standards publications listed below:

1. National Electrical Manufacturers Association Standards Publication MG1–1993, *Motors and Generators*, and Revisions 1, 2, 3 and 4.
2. Institute of Electrical and Electronics Engineers, Inc., *Standard Test Procedure for Polyphase Induction Motors and Generators*, IEEE Std 112–1996, and the correction to the calculation at item (28) in section 10.2 Form B-Test Method B issued by IEEE on January 20, 1998.
3. CSA International (or Canadian Standards Association) Standard C390–93, *Energy Efficiency Test Methods for Three-Phase Induction Motors*.
4. International Electrotechnical Commission Standard 60034–1 (1996), *Rotating electrical machines*, Part 1: *Rating and performance*, and Amendment 1 (1997).
5. International Electrotechnical Commission Standard 60050–411 (1996), *International Electrotechnical Vocabulary Chapter 411: Rotating machinery*.
6. International Electrotechnical Commission Standard 60072–1 (1991), *Dimensions and output series for rotating electrical machines—Part 1: Frame numbers 56 to 400 and flange numbers 55 to 1080*.
7. International Electrotechnical Commission Standard 60034–12 (1980), *Starting performance of single-speed three-phase cage induction motors for voltages up to and including 660 V*, and Amendment 1 (1992) and Amendment 2 (1995).

Copies of these standards publications may be viewed at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585–0101, telephone (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Copies of the NEMA standards and the International Electrotechnical Commission standards can be obtained from Global Engineering Documents, 15 Inverness Way East, Englewood, Colorado 80112–5776. Copies of the IEEE standards can be obtained from the Institute of Electrical and Electronics Engineers, Inc., 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331. Copies of the CSA standards can be obtained from CSA International, 178 Rexdale Boulevard, Etobicoke (Toronto), Ontario, Canada M9W 1R3.

I. Introduction
A. Authority
B. Background
C. Summary of Rule
II. Discussion
A. Definitions
1. Electric Motor
2. Basic Model
3. General Purpose
4. Special Purpose Motor
5. Accreditation
6. Average Full Load Efficiency
7. Nominal Full Load Efficiency
B. Test Procedures
1. NEMA Standards Publication MG1–1993, with Revisions 1 through 4
2. Modifications to the IEEE Std 112–1996 Test Method B
a. Typographical Errors
b. Provisions Subject to Interpretation
c. Incorrect Information
d. Summary
C. Determination of a Motor's Efficiency: Use of Accredited Laboratories and Certification Programs, Selection of Basic Models for Testing, Alternative Means to Measure Efficiency, and Sampling Plans for Testing
1. Summary of DOE's Proposals
2. Issues Involving Both Use of Accredited Laboratories and Use of Certification Organizations
3. Issues Concerning Use of Certification Organizations
4. Compliance Testing When a Manufacturer Does Not Use a Certification Program (Independence and Performance of an Accredited Laboratory, Selection of Basic Models for Testing, Sampling Plan) and Enforcement Testing Sampling Plan
a. Accredited Laboratories
b. Selection of Basic Models for Testing
c. Sampling Plans for Compliance and Enforcement Testing
(1) Sampling Plan for Compliance Testing
(2) Sampling Plan for Enforcement Testing
D. Energy Efficiency Standards
1. Non-standardized Horsepower Ratings
2. Motor Horsepower and Standard Kilowatt Equivalent
3. World Trade Organization (WTO) Agreements and the Trans Atlantic Business Dialogue (TABD)
4. Electric Motors as Components of Systems
E. Labeling
1. Statutory Provisions
2. Provisions of Regulation
a. Use of the Words ''Energy Efficient''
b. Use of Standardized Nominal Full Load Efficiency Values
c. Minimum Efficiency
d. Display of Nominal Efficiency, Compliance Certification Number, ''ee'' Logo, and Date of Compliance
e. Labeling of Motors Not Covered by EPCA
f. Enforcement Testing Where Violation of a Labeling Representation is Alleged

[1] The Notice of Proposed Rulemaking (NOPR) in this matter contains many references to the ''Canadian Standards Association.'' Since publication of the NOPR, that organization has changed its name to CSA International. In this Notice and today's final rule, therefore, the latter name is used to refer to the organization, although abbreviated references use the abbreviation ''CSA'' as in the NOPR.

g. Imported Motors
h. Weights of Conductors and Magnetic Materials
F. Certification of Compliance
1. Reference to Certification Programs
2. Nominal Versus Average Full Load Efficiency
3. Other Information to Be Reported
4. Compliance Certification Number
G. Other Matters
1. Standards Incorporated by Reference
2. Enforcement: Determining What Constitutes a ''Separate Violation''
3. Technical Corrections
a. References to International Standards
b. Use of Term ''Energy Conservation Standard''
c. Preemption of State Regulations
d. Provisions Incorporated from Part 430
e. Amount of Penalty
f. Prohibited Acts—Section 431.122
g. Language Changes in Sections 431.23 and 431.124(a)
III. Procedural Issues and Regulatory Review
A. Review Under the National Environmental Policy Act
B. Review Under Executive Order 12866, ''Regulatory Planning and Review''
C. Review Under the Regulatory Flexibility Act
D. Review Under Executive Order 12612, ''Federalism''
E. Review Under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights''
F. Review Under the Paperwork Reduction Act
G. Review Under Executive Order 12988, ''Civil Justice Reform''
H. Review Under Section 32 of the Federal Energy Administration Act
I. Review Under Unfunded Mandates Reform Act
J. Review Under Small Business Regulatory Enforcement Fairness Act

I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act of 1975, Public Law 94–163, as amended, by the National Energy Conservation Policy Act of 1978 (NECPA), Public Law 95–619, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, established the Energy Conservation Program for Consumer Products other than Automobiles. Part 3 of Title IV of NECPA amended EPCA to add ''Energy Efficiency of Industrial Equipment,'' which includes electric motors. EPAct also amended EPCA with respect to electric motors, providing definitions in section 122(a), test procedures in section 122(b), labeling provisions in section 122(c), energy efficiency standards in section 122(d), and compliance certification requirements in section 122(e).[2]

EPCA defines ''electric motor'' as any motor which is ''general purpose T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction of the National Electrical Manufacturers Association (NEMA) Designs A and B, continuous-rated, operating on 230/460 volts and constant 60 Hertz line power, as defined in NEMA Standards Publication MG1–1987.'' EPCA § 340(13)(A), 42 U.S.C. 6311(13)(A). EPCA then prescribes efficiency standards for electric motors that are 1 through 200 horsepower, and ''manufactured (alone or as a component of another piece of equipment),'' except for ''definite purpose motors, special purpose motors, and those motors exempted by the Secretary.'' EPCA § 342(b)(1), 42 U.S.C. 6313(b)(1).

The Act also requires that testing procedures for electric motor efficiency shall be the test procedures specified in NEMA Standards Publication MG1–1987, and the Institute of Electrical and Electronics Engineers, Inc., (IEEE) Standard 112 Test Method B for motor efficiency, as in effect on October 24, 1992. EPCA § 343(a)(5)(A), 42 U.S.C. 6314(a)(5)(A). If those specified test procedures are amended, the Secretary must amend the testing procedures under EPCA to conform to such amended test procedures in the NEMA and IEEE standards, unless the Secretary determines, by rule, that the amended test procedures are not reasonably designed to produce results that reflect energy efficiency, energy use, and estimated operating costs, and would be unduly burdensome to conduct. EPCA § 343(a)(5) (B) and (C), 42 U.S.C. 6314(a)(5) (B) and (C).

Additionally, EPCA directs the Secretary, subject to certain conditions and after consultation with the Federal Trade Commission (FTC), to prescribe efficiency labeling rules for electric motors. EPCA § 344(d), (f), and (h) 42 U.S.C. 6315(d), (f) and (h).

Finally, the Act directs the Secretary to require motor manufacturers to certify compliance with the applicable energy efficiency standards through an independent testing or certification program nationally recognized in the United States. EPCA § 345(c), 42 U.S.C. 6316(c).

B. Background

The Department held a public meeting on June 2, 1995, to discuss issues and gather information related to the energy efficiency requirements for electric motors covered under EPCA. The meeting covered the following questions: How should key terms be defined? Which equipment is covered by the statute? What is the nature and scope of required testing? How can independent testing and certification programs be used to establish compliance with applicable standards? What are the means of certifying such compliance to DOE? What are possible labeling requirements? What other issues need resolution? Statements received after publication of the Notice of that public meeting (60 FR 27051, May 22, 1995), and at the meeting itself, helped to refine the issues involved in this rulemaking, and provided information that contributed to DOE's proposed resolution of these issues.

On November 27, 1996, DOE published in the **Federal Register** a proposed rule (NOPR), to create a new part 431 in the Code of Federal Regulations (10 CFR Part 431), entitled the Energy Conservation Program for Commercial and Industrial Equipment. 61 FR 60440 (November 27, 1996). This NOPR set forth energy efficiency requirements for electric motors. As with the program for consumer products, the proposed rule encompassed the following: test procedures; Federal energy conservation standards; labeling; and certification and enforcement. The testing and standards requirements prescribed by EPCA were incorporated in the proposed rule. Labeling requirements in accordance with EPCA's criteria for electric motor labels, and certification, enforcement and state law pre-emption provisions, largely patterned after those applicable to consumer products, were proposed. In addition, to implement EPCA's testing and certification requirements, the NOPR proposed requirements concerning the selection of electric motors for testing and the entities that could be used to establish that a motor complies with the applicable standard. Finally, the NOPR proposed provisions to clarify which motors are covered by EPCA, including clarification of the statutory definition of ''electric motor.''

Despite these clarifications, manufacturers expressed uncertainty as to which electric motors, with which modifications, are covered under EPCA. They also questioned their ability to comply with the statute by the effective date of October 24, 1997 with respect to certain motors. To address these issues, the Department, on November 5, 1997, published *Policies on Coverage and Enforcement of Energy Efficiency*

[2] These requirements are codified in Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6311–6317.

Requirements for Electric Motors; Final Rule, 62 FR 59978 (November 5, 1997) (Policy Statement). This Policy Statement, based on recommendations from motor manufacturers and energy efficiency advocates, provided guidance as to which modifications of electric motors are ''general purpose,'' ''definite purpose,'' and ''special purpose'' under EPCA. The Policy Statement also stated circumstances under which the Department would refrain from taking enforcement action with respect to certain limited categories of motors that would not meet the energy efficiency standards by the October 25, 1997 effective date.

Comments presented at the public hearing on January 15, 1997, and additional written comments submitted following the public hearing have helped the Department to refine and resolve the issues involved in this rulemaking. Portions of many of the statements are quoted and summarized in section II, *Discussion of Comments*. A parenthetical reference at the end of a quotation or passage in section II provides the location index in the public record of the portion of a statement that is being quoted or discussed.[3]

The hearing and written comments, as well as the Department's further review of the proposed rule, gave rise to several issues that were subsequently addressed in a notice reopening the comment period for the proposed rule, which was published in the **Federal Register** at 63 FR 34758 (June 25, 1998) (''reopening notice''). The issues concerned (1) modifications to the IEEE Std 112–1996 Method B test procedures, (2) adoption of sampling plans for compliance and enforcement proposed by the National Electrical Manufacturers Association in lieu of the sampling plans in the proposed rule, (3) sampling plans where a motor's efficiency is established through a certification organization rather than through testing in an accredited laboratory, (4) enforcement testing where violation of a labeling representation is alleged, and (5) procedures for the withdrawal of recognition from an organization DOE has classified as an accreditation body, or as a nationally recognized certification program. Comments received as a result of the reopening notice have further helped the Department to refine and resolve the issues in this rulemaking.

C. Summary of Rule

Today's final rule incorporates the energy efficiency test procedures and standards established by EPCA for certain commercial and industrial electric motors. EPCA sections 343(a)(5), 42 U.S.C. 6314(a)(5), and 342(b)(1), 42 U.S.C. 6313(b)(1). It also establishes efficiency labeling requirements and compliance certification requirements for motors, as directed by EPCA. EPCA sections 344, 42 U.S.C. 6315, and 345(c), 42 U.S.C. 6316(c). Among its provisions, today's final rule (1) defines terms used in the rule, including definitions that clarify which motors, including metric, are covered under EPCA;[4] (2) incorporates by reference the IEEE Standard 112 Test Method B (with minor modifications), CSA Standard C390 Test Method (1), and portions of other industry standards; (3) sets forth methods for establishing compliance, such as a sampling plan for selecting motors for testing, calculation in some instances of a motor's efficiency, use of an accredited laboratory for testing, and use of a certification program; (4) establishes criteria for recognizing laboratory accreditation organizations and certification programs; and (5) requires the energy efficiency value of an electric motor, and a Department of Energy Compliance Certification number, to be both marked on the nameplate and disclosed in marketing materials, and allows use of an ''ee'' logo or other similar logo. The rule also addresses waiver of the test procedures, pre-emption of state regulations, and enforcement.

II. Discussion

The Department received approximately 31 sets of written comments on the proposed rule, from motor manufacturers, original equipment manufacturers, energy efficiency advocates, trade associations, other government agencies, and individuals. The Department received data and recommendations related to the accuracy and workability of many provisions in the proposed rule.

A. Definitions

1. Electric Motor

Section 340(13)(A) of EPCA defines the term ''electric motor'' as ''any motor which is a general purpose T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction motor of the National Electrical Manufacturers Association, Design A and B, continuous rated, operating on 230/460 volts and constant 60 Hertz line power as defined in NEMA Standards Publication MG1–1987.''

In the NOPR, DOE proposed to clarify this definition. Hence the proposed rule included an expanded definition of ''electric motor'' as well as a definition of ''general purpose motor,'' a term that is an important element of EPCA's definition of electric motor but that is not defined in EPCA. 61 FR 60442–46, 60465–66 (November 27, 1996). Although some comments, discussed below, raised issues concerning specific elements of the proposed definition of ''electric motor,'' none objected to DOE's overall approach or to the definition of ''general purpose motor.''

The Department understands, however, that there exist a wide variety of motors that are modifications to the generic general purpose motor, and that motor manufacturers are concerned as to precisely which of these motors, having various features and characteristics, are covered under the statute. There seems to be a consensus that, due to the large number and the constant changes of motor designs, it would be impractical and unwise for the DOE regulations to try to exhaustively delineate the specific types of motors that are covered.

In its opening statement at the January 15, 1997, public hearing (Public Hearing Tr. pg. 42),[5] NEMA suggested instead the use of guidelines, along with a matrix setting forth various motor designs, as an aid in construing the statute and regulations. (NEMA, No. 18).[6] The Department agrees with this approach, and believes the guidelines and the matrix provided in the Policy Statement, in conjunction with definitions in the proposed rule, make clear whether a motor is covered under EPCA and today's regulations. Therefore, today's rule adopts, with minor technical changes, the ''electric motor'' and related definitions of the proposed rule, and incorporates the

[3] For example: ''(UL, No. 9 at pg. 1)'' refers to (1) a statement that was submitted by Underwriters Laboratories Inc. and is recorded in the DOE Freedom of Information Reading Room in the docket under ''Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures, Labeling, and Certification Requirements for Electric Motors,'' Docket Number EE–RM–96–400, as comment number nine; and (2) a passage that appears on page 1 of that statement.

[4] Section 340(13) of EPCA defines ''electric motor'' and ''nominal full load efficiency'' by reference to NEMA Standards Publication MG1–1987. However, a more recent version of MG1, MG1–1993, is more readily available. Therefore, references to MG1 in the definitions in today's rule are to MG1–1993 rather than MG1–1987, whenever reference to the current version results in the rule having the same substance and coverage as it would have with a reference to MG1–1987.

[5] ''Public Hearing, Tr. pg. 42,'' refers to the page number of the transcript of the ''Public Hearing on Energy Efficiency Standards, Test Procedures, Labeling, and Certification Reporting for Certain Commercial and Industrial Electric Motors,'' held in Washington, DC, January 15, 1997.

[6] See footnote 2.

Policy Statement as appendix A to subpart A of 10 CFR Part 431 of the rule.

The following addresses the comments concerning specific elements of the proposed definition of ''electric motor:''

NEMA Electrical Designs A, B, and C. Sections 342 through 345 of EPCA require only certain motors to meet applicable energy efficiency requirements. In accordance with EPCA's definition of ''electric motor,'' quoted above, section 431.2 of the proposed rule, 61 FR 60465 (November 27, 1996), and of today's final rule, state that an electric motor ''(6) Has performance in accordance with NEMA Design A or B characteristics, or equivalent designs such as IEC Design N * * *''

Toshiba advocates that Design C motors be covered by EPCA. (Toshiba, No. 14, p. 2.). Standard efficiency stock motors are generally Design A or B, and Mr. W. Treffinger asserts that several manufacturers offer such motors as Design C. He raises the question as to whether a manufacturer could re-nameplate these motors as ''Design C definite purpose/conveyor duty'' in order to continue selling current designs that do not meet EPCA efficiency standards. (Treffinger, No. 4 at 3.).

The purpose of this rulemaking is to implement EPCA's efficiency requirements for electric motors. Since EPCA imposes such requirements only for Designs A and B, as categorized in NEMA MG1, for the Department to cover Design C motors in today's rule would go beyond the requirements of EPCA and the scope of this rulemaking. Therefore, the Department cannot accept Toshiba's apparent suggestion that it extend EPCA efficiency requirements directly to Design C motors. In addition, it is questionable whether the Department has the discretion to take such action, absent an amendment to EPCA. See EPCA sections 340–341, 42 U.S.C. 6311–6312. On the other hand, a motor that exhibits the performance characteristics of NEMA Designs A or B, and that is mis-labeled NEMA Design C, is obviously covered by EPCA.

Additional Motor Designs and Characteristics. Toshiba International Corporation and Mr. W. Treffinger assert that EPCA should cover as large a population of motors as possible to maximize energy savings. Both would extend EPCA coverage to include footless or round body motors which are face-mounting or flange-mounting, motors operating on 200 volts or 575 volts, definite-purpose motors such as close-coupled pump motors, and motors with 8 or more poles. Toshiba and Mr. Treffinger argue that such motors have essentially the same electrical characteristics as covered electric motors, and the addition of such motors would maximize energy savings. (Toshiba, No. 14, and Treffinger, No. 4 at 1.).

The Department is sympathetic to the potential energy savings that could be achieved if the aforementioned types of motors were covered by EPCA. In the Department's view, however, as with Design C motors, EPCA does not impose efficiency requirements for the types of motors described by Toshiba and Mr. Treffinger, and hence they are outside the scope of this rulemaking. The Department, nevertheless, encourages motor manufacturers to voluntarily improve the efficiency of any motor designs, if the improvements are technically feasible, economical, and energy-saving.

Voltage rating. Section 340(13)(A) of EPCA defines ''electric motor,'' in part, as ''operating on 230/460 volts and 60 Hertz line power.'' The DOE proposed rule (61 FR 60465, November 27, 1996) clarifies this part of the EPCA definition as meaning a motor that ''operates on polyphase alternating current 60-Hertz sinusoidal power, and is: (i) Rated 230 volts or 460 volts, or both, including any motor that is rated at multi-voltages that include 230 volts or 460 volts, or (ii) Can be operated on 230 volts or 460 volts, or both.''

The joint comments of the Washington State University Cooperative Extension Energy Program and the Washington State Department of Community, Trade and Economic Development (WSU/WSD) state that motors designed for standard service voltages of 240 and 480 volts are rated at 230 and /or 460 volts, from zero to eight percent lower than those standard service voltages, to allow for presumed distribution system voltage drop. They assert that a tolerance be placed on the 230/460 volt stipulation to allow for deviations that occur in this rating among motor models intended for the same service voltage, and give examples of motors on the market which are rated at 220 and 440, and others rated at 480 volts. WSU/WSD recommend at least a 10 percent tolerance be applied to the 230 volts and 460 volts prescribed by EPCA, and that item (7)(ii) in the ''electric motor'' definition in section 431.2 of the final rule explicitly state: ''Can be operated on 230 volts or 460 volts without exceeding the 10% over/under voltage tolerance stipulated in NEMA MG1 1993 R1, section 12.44.'' (WSU/WSD, No. 5, at II.A.).

The Department agrees with WSU/WSD's apparent assumption that motors with voltages within the 10 percent tolerance meet EPCA's definition of ''electric motor,'' and with WSU/WSD's statement that such motors meet the ''electric motor'' definition in the proposed rule. (WSU/WSD, No. 5 at II.A.).

In its Policy Statement, issued subsequent to the filing of WSU/WSD's comments, the Department stated that the criteria in NEMA MG1–1993, paragraph 12.44, ''Variations from Rated Voltage and Rated Frequency,'' which includes the 10 percent voltage tolerance criterion, should be used to determine whether a motor not rated at 230 or 460 volts or 60 Hertz would nevertheless be within EPCA's definition of ''electric motor.'' The Department also indicated in the Policy Statement, and continues to believe, that such criteria apply in determining whether a motor meets the ''electric motor'' definition in the proposed rule. The Department is aware of no opposition to these positions, including its view that the 10 percent tolerance is to be used to determine which motors are covered by EPCA efficiency requirements. Moreover, DOE sees no reason to include this tolerance in the regulatory definition of electric motor, but not the other variations addressed in NEMA MG1–1993 paragraph 12.44. To include all of these variations, however, would increase substantially the complexity of the definition. For these reasons, DOE believes that it is unnecessary to add to the final rule language proposed by WSU/WSD on this point.

2. Basic Model

The proposed rule defines ''basic model'' to mean ''all units of a given type of covered equipment (or class thereof) manufactured by a single manufacturer, and, with respect to electric motors, which have the same rating, have electrical characteristics that are essentially identical, and do not have any differing physical or functional characteristics which affect energy consumption or efficiency.'' As used in this definition, ''rating'' is ''one of the 113 combinations of an electric motor's horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction, with respect to which section 431.42 prescribes nominal full load efficiency standards.'' 61 FR 60465 (November 27, 1996).

WSU/WSD support the idea of defining ''basic model'', but assert that the limits on what electric motors can be consolidated into a particular basic model need to be more specific. WSU/WSD suggest that electric motors

consolidated into a basic model have the following criteria: (1) identical enclosure designation; (2) identical and interchangeable stator cores; (3) electrically identical windings, i.e. circular mils and ampere-turns per slot, winding pattern, and resistance in milliohms per rated volt; and (4) identical and interchangeable rotor core and cage. WSU/WSD also recommended that no untested model of motor be adopted into a basic model consolidation if it has mechanical features that tend to increase friction or windage above tested models. Such features could include larger bearings, sealed versus shielded bearings, a larger or higher capacity cooling fan, or shaft grounding brushes. (WSU/WSD, No. 5 at II.E.)

The Department believes that many enclosure designations are based on physical or functional characteristics which have nothing to do with the energy consumption or efficiency performance of a motor. For example, the same electrical design may be put into enclosures identified as open, dripproof, splash-proof, semi-guarded, guarded, or dripproof guarded, yet the enclosures may differ only in the location and size of the ventilation holes in the frame. Because all of these enclosures would have different designations using standardized industry terminology, to define ''basic model'' in terms such as ''identical enclosure designations'' or ''electrically identical windings,'' as recommended by WSU/WSD, would appear to increase the number of basic models immensely without apparent benefit. In another example, the same electrical design is often used in general purpose enclosed motors and explosion-proof motors, differing only in the construction and fit of the joints and frame openings (shaft and conduit box leads) to meet hazardous location requirements. In this case, the two separate motors would necessarily have different enclosure designations. Both would be considered enclosed motors that could be included within the same basic model as that term is defined as in section 431.2 of the proposed rule, 61 FR 60465 (November 27, 1996), although under the WSU/WSD approach they would be different basic models. The Department concludes that the WSU/WSD criteria for characterizing ''basic model,'' would lead to additional testing and reporting that are unnecessary to achieve compliance with EPCA efficiency requirements, and would be unduly burdensome to manufacturers. Therefore, the Department is adopting, in today's final rule, the definition of ''basic model'' at 61 FR 60465 (November 27, 1996) in the proposed rule.

3. General Purpose

The descriptor ''general purpose,'' is one element both of the definition of ''electric motor'' and ''definite purpose motor'' at sections 340(13)(A) and (B) of EPCA, respectively. EPCA characterizes, in part, a ''definite purpose motor'' as any motor ''for use under service conditions other than usual'' and ''which cannot be used in most general purpose applications.'' EPCA defines neither ''general purpose'' nor ''service conditions other that usual.''

Section 431.2 in the proposed rule defines the term ''general purpose motor'' as ''any motor which is designed in standard ratings with either: (1) Standard operating characteristics and mechanical construction for use under usual service conditions, such as those specified in NEMA Standards Publication MG1–1993, paragraph 14.02, 'Usual Service Conditions,' and without restriction to a particular application or type of application; or (2) Standard operating characteristics or standard mechanical construction for use under unusual service conditions, or for a particular type of application, and which can be used in most general purpose applications.'' 61 FR 60466 (November 27, 1996).

Underwriters Laboratories Inc. (UL) expresses difficulty interpreting what is meant by ''other than usual'' service conditions. UL asserts that (1) the potential for misclassifying a motor is prominent, (2) it would be difficult to conclusively list ''unusual service conditions,'' and (3) it would be beneficial to have criteria for ''other than usual'' service conditions. (UL, No. 9, at pg. 1.).

The Department agrees that it would be beneficial to have criteria to judge ''other than usual'' service conditions, and that would be a formidable task to develop criteria that would account for the many environmental, power supply, and equipment operating characteristics which individually or in combination would constitute a service condition that is ''other than usual.'' NEMA Standards Publication MG1–1993 paragraph 14.03, ''Unusual Service Conditions'' lists examples, however, of operating conditions which require the manufacturer's consultation, to determine the suitability of a particular general purpose motor being considered for an application. The Department believes that no single item exemplified in paragraph 14.03, by itself, necessarily establishes the existence of unusual service conditions, and that paragraph 14.03 does not contain an exhaustive list of such conditions. Nevertheless, to provide guidance as to the meaning of this term, in the definitions of both ''general purpose motor'' and ''definite purpose motor'' the final rule cites paragraph 14.03 as providing examples of unusual service conditions. This is done in the same way that the proposed and final rules amplify the term ''usual service conditions'' by stating ''such as those specified'' in paragraph 14.02 of MG1–1993, ''Usual Service Conditions.''

4. Special Purpose Motor

Section 340(13)(C) of EPCA defines ''special purpose motor'' as ''any motor, other than a general purpose motor or definite purpose motor, which has special operating characteristics or special mechanical construction, or both, designed for a particular application.'' Section 431.2, ''Definitions,'' in the proposed rule, clarifies the term ''special purpose motor'' to mean ''any motor that is designed for a particular application, and that either (1) is designed in non-standard ratings with special operating characteristics or special mechanical construction, or (2) has special operating characteristics and special mechanical construction.''

NEMA objects to the qualifying language, ''non-standard ratings,'' in the proposed rule, asserting that it is common for special purpose motors to have standard ratings, not non-standard ratings. NEMA further asserts that it is unclear what the Department means by ''non-standard rating.'' It states that the term ''rating'' in section 431.2 of the proposed rule, is used as a qualifier in the definition of ''basic model,'' to refer to one of the 113 combinations of horsepower, poles, and open or enclosed construction, and as such appears to be in conflict with section 431.42(b) in the proposed rule, which applies the requirements in EPCA to non-standard ratings through an interpolation methodology. As to Part 2 of the proposed definition of ''special purpose motor,'' NEMA alleges a conflict with the language of the EPCA definition. NEMA claims that if the Department deleted the text ''in non-standard ratings'' from the NOPR's proposed definition of special purpose motor, the resulting definition would be consistent with the EPCA definition. (NEMA, No. 18 at page 4.).

The Department's proposed definition of ''special purpose motor'' was intended to clarify the distinction between that type of motor and motors that would be ''definite purpose'' motors but for the fact that they can be used in most general purpose

applications, and are therefore covered by EPCA requirements. Upon further review, the Department has decided that EPCA's definitions sufficiently distinguish between these types of motors, and agrees with NEMA that the substance of DOE's proposed definition departs from the statutory definition. Therefore, the definition of ''special purpose motor'' in the final rule is identical to the statutory definition of that term. The Department disagrees, however, with NEMA's assertion that the meaning given to the term ''rating'' in the definition of ''basic model'' apparently conflicts with other parts of the rule and creates uncertainty. The proposed rule's ''basic model'' definition states that such meaning of ''rating'' is ''for purpose [sic] of this definition.'' Thus such meaning does not apply throughout the rule.

5. Accreditation

Section 431.2 of the proposed rule defines ''accreditation'' as ''recognition by an authoritative body that a laboratory is competent to perform all of the specific test procedures that are required by or incorporated into this part.'' 61 FR 60465 (November 27, 1996).

NEMA asserts that it is not clear as to which ''test procedures'' are being referred to in the definition. NEMA states that the electric motor industry uses the term ''test procedures'' to apply to the IEEE Standard 112–1996 or CSA Standard C390–93 methods of conducting tests to measure motor efficiency. These methods have formed the basis of proposed accreditation programs to date. (NEMA, No. 18 at page 4.).

The Department agrees that the proposed definition needs to be clarified, and that accreditation to perform test procedures for electric motors is with reference to IEEE Standard 112 Test Method B and CSA Standard C390 Test Method (1). The Department also notes, however, accreditation would generally have to be based on the version of the test method currently incorporated into the DOE regulations. For these reasons, in today's final rule, the term ''accreditation'' is defined at section 431.2 of 10 CFR Part 431, as recognizing competence to perform the IEEE Std 112–1996 Test Method B and CSA Standard C390–93 Test Method (1) for electric motors.

6. Average Full Load Efficiency

Section 431.2 of the proposed rule defines ''average full load efficiency'' to mean ''the average efficiency of a population of electric motors of duplicate design, where the efficiency of each motor in the population is the ratio (expressed as a percentage) of the motor's useful power output to its total power input when the motor is operated at its full rated load.''

NEMA recommends that the clarifying text, ''rated voltage, and rated frequency,'' be added after the words ''full rated load,'' in the definition of ''average full load efficiency.'' (NEMA, No. 18 at page 4.). Washington State asserts that it would be more precise to define ''average full load efficiency'' as the ''arithmetic mean efficiency,'' since ''average'' could convey various measures of central tendencies, such as median or mode. (WSU/WSD, No. 5 at II.N.).

The Department believes that the clarifying text, ''rated voltage, and rated frequency,'' proposed by NEMA, is consistent with the EPCA definition of ''electric motor,'' which refers to ''Design A and B'' and ''operating on 230/460 volts and constant 60 Hertz line power as defined in NEMA Standards Publication MG1–1987.'' Moreover, the clarifying text provides a benchmark for measuring the average full load efficiency of a population of electric motors of duplicate design by screening out voltage and frequency variations which could be deleterious to efficiency under running conditions. Therefore, the Department is adding the words ''rated voltage, and rated frequency'' in today's final rule. The Department also understands the need for clarity in the definition of ''average efficiency'' per WSU/WSD's comment, and is adding the term ''arithmetic mean efficiency'' in the definition of ''average full load efficiency.''

7. Nominal Full Load Efficiency

The term ''nominal full load efficiency'' in section 341(13)(H) of EPCA means ''the average efficiency of a population of motors of duplicate design as determined in accordance with NEMA Standards Publication MG1–1987.'' Section 431.2 in the proposed rule defines the term ''nominal full load efficiency'' as it applies to an electric motor, to mean ''the nominal efficiency in Column A of Table 12–8, NEMA Standards Publication MG1–1993, that is either the closest lower value to, or that equals, the average full load efficiency of electric motors of the same design.''

NEMA encourages the Department to use a definition of ''nominal full load efficiency'' as it is in NEMA MG1–1993, to avoid the confusion of more than one definition of ''nominal full load efficiency.'' NEMA acknowledges that the MG1 definition does not require the manufacturer to select a single value for nominal efficiency from Table 12–8 in NEMA MG1, but that the manufacturer could select any value that does not exceed the average full load efficiency of the population of motors. NEMA contends that the EPCA definition takes the same approach. (NEMA, No. 18 at p. 5.)

Based on testimony at the Public Hearing on January 15, 1997 (TR pgs. 57–60), the Department understands that the fixed values in Table 12–6B in NEMA MG1–1987 (Table 12–8 in MG1–1993) are an adopted set of incremental values that manufacturers have chosen to use as labeling values. The Department is aware that the NEMA MG1 Table 12–6B was created to prevent mismarking or confusion that could occur if one manufacturer, for example, labeled a motor 93.53 percent efficient and another manufacturer marked a motor 93.57 percent efficient. Variations in materials, manufacturing processes, and tests can result in motor-to-motor variations for a given motor design, so that the full load efficiency for motors of a single design is not a unique efficiency but rather a band of efficiency. The NEMA MG1 Table 12–6B established a logical series of ''nominal'' motor efficiencies, from which the motor nameplate efficiency marking is selected, to avoid the inference of unrealistic accuracy that might be assumed from a potentially infinite number of labeled efficiency values. Thus, paragraph 12.58.2 of NEMA MG1–1993 provides that the full load efficiency of a motor shall be identified by a nominal efficiency value selected from Table 12–8 (previously Table 12–6B in NEMA MG1–1987), ''which shall be not *greater than* the average efficiency of a large population'' of such motors. Such nominal value could, in theory, be any value listed in Table 12–8 that is not greater than the average efficiency of the large population.

The Department's proposed definition resulted from a belief that manufacturers should be required to use for each motor the nominal full load value that corresponds most closely to the efficiency test or calculation results for that motor. NEMA has stated, however, that other analysis might influence a manufacturer to select a lower value for a particular motor, and that a manufacturer would be unlikely to select a value lower than the greatest value that could be supported.

Notwithstanding its view that its proposed definition of ''nominal full load efficiency'' is supported by the definition of that term in EPCA, the Department also believes the Act can be construed as supporting use of the

approach in MG1–1993. In light of NEMA's comments, the Department is adopting, in today's final rule, a definition of ''nominal full load efficiency'' that conforms to the use of that term in paragraph 12.58.2 of MG1–1993.

B. Test Procedures

Section 343(a)(5)(A) of EPCA requires that the test procedures to determine the efficiency of electric motors under EPCA shall be the test procedures specified in NEMA MG1–1987 and IEEE Standard 112 Test Method B (IEEE 112) for motor efficiency, as in effect on the date of the enactment of the Energy Policy Act of 1992. If the test procedures in NEMA MG1 and IEEE 112 are subsequently amended, the Secretary of Energy is required to revise the regulatory test procedures for electric motors to conform to such amendments, ''unless the Secretary determines by rule, * * * supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures described in'' sections 343(a) (2) and (3) of EPCA.

In general, the Edison Electric Institute (EEI) supports the energy efficiency test procedures prescribed in the proposed rule because they are consistent with the IEEE and the American National Standards Institute procedures. (EEI, No. 15)

1. NEMA Standards Publication MG1–1993, with Revisions 1 through 4

In the NOPR, the Department stated its intention to adopt the test procedures for the measurement of energy efficiency in NEMA MG1–1993 with Revision 1. 61 FR 60446, 60466, 60469 (November 27, 1996). Revision 2, 3 and 4 have also been added to MG1–1993. Revisions 2 and 3 make editorial clarifications to the determination of efficiency and losses under MG1–12.58.1. Whereas in MG1 Revision 1, motors from 1 to 125 horsepower were tested by dynamometer according to IEEE Standard 112 Test Method B or CSA Standard C390 Test Method (1), MG1 Revision 4 extends testing by dynamometer up to 400 horsepower under MG1–12.58.1, thereby including the 1 through 200 range of horsepower ratings under EPCA.

The Department does not intend to determine that the test procedure amendments in Revisions 2–4 of MG1–1993 fail to meet the requirements of sections 343(a)(2) and (3) of EPCA, 42 U.S.C. 6314(a)(2) and (3), except to the extent that such a determination is warranted, as discussed below, with respect to certain provisions of IEEE Std 112–1996 Test Method B (which MG1 references). The Department is adopting, in today's final rule, the test procedure requirements to measure energy efficiency and losses in NEMA MG1 with Revisions 1 through 4, but with certain modifications to IEEE Std 112–1996 Test Method B.

2. Modifications to the IEEE Std 112–1996 Test Method B

IEEE Std 112–1991 Test Method B was incorporated into the proposed rule, but was revised and superseded by IEEE Std 112–1996, which was published May 8, 1997. A minor revision was made in IEEE Std 112–1996 on January 20, 1998, when IEEE issued a notice of correction for the calculation at item (28) in section 10.2 Form B-Test Method B: ''Calculation form for input-output test of induction machine with segregation of losses and smoothing of stray-load loss.'' Under section 343(a)(5)(B) of EPCA, 42 U.S.C. 6314(a)(5)(B), DOE must now adopt the test procedures in IEEE Std 112–1996 with the minor revision, unless clear and convincing evidence supports a conclusion that such test procedures are not reasonably designed to produce test results which reflect energy efficiency, or are unduly burdensome to conduct.

The Department compared IEEE Std 112–1991 to IEEE Std 112–1996 to determine whether there were differences in the two versions of Test Method B, and, if so, whether to adopt Test Method B in IEEE Std 112–1996 into the final rule for electric motors. As a result of its analysis, the Department believes Test Method B in IEEE Std 112–1996 improves upon the version of that test method in IEEE Std 112–1991, because IEEE Std 112–1996 includes: tightened tolerances on metering instrumentation (IEEE 112, clause 4); a more comprehensive and consolidated verbal description of the components of Test Method B (IEEE 112, clause 6.4); and specific formulae provided for calculation of stator I^2R losses (IEEE 112, clause 5.1).

After publication of IEEE Std 112–1996 in May 1997, however, the Department became aware, through information submitted by a testing laboratory that has gained experience using the test procedure, that Test Method B in IEEE Std 112–1996 contains 1) typographical errors, 2) statements of procedure that are open to interpretation, and 3) incorrect information. For a given motor, these defects could cause varying measurements of efficiency, or errors ranging from plus or minus one-half to one and one-half percentage points in measured efficiency, thereby throwing an electric motor into the next higher or lower level of nominal efficiency, and effectively rendering it either in or out of compliance with the applicable EPCA efficiency standard. Subsequently, the Department confirmed the existence of these types of problems with IEEE Std 112–1996 through contacts with other testing laboratories, a certification organization, and manufacturers, each known to have experience with IEEE Standard 112–1996, and through discussions with the Chairman of the IEEE Induction Power Subcommittee. (IEEE has since corrected one such error, in its January 1998 notice of correction.) In sum, although Test Method B in IEEE Std 112–1996 has several advantages, mentioned above, it also has typographical errors, provisions subject to interpretation, and incorrect information.

The Department announced its intention, in the **Federal Register**, at 63 FR 34758 (June 25, 1998), that the final rule would prescribe IEEE Std 112–1996 Test Method B, with the January 1998 correction, as a test procedure under EPCA for determining the energy efficiency of electric motors, but with certain modifications set forth at 63 FR 34759–62 (June 25, 1998). The Department reopened the comment period on the proposed rule for motors, in part to solicit comments on these modifications. The Department noted, 63 FR 34759 (June 25, 1998), that it was not altering the IEEE test procedure, but was ''proposing only to mandate certain modifications to IEEE 112–1996 Test Method B *when it is used for purposes of measuring efficiency under EPCA*.''

The Department received six sets of comments on these proposed modifications to IEEE Std 112–1996 Test Method B. There is general acknowledgment that IEEE Std 112–1996 Test Method B needs modification or correction, but some commenters opposed changes by the Department for purposes of EPCA. In general, Advanced Energy Corporation and Zentralverband Elektrotechnik-und Elektronikindustrie e.V. (ZVEI) support the Department's corrections and modifications to IEEE Std 112–1996. (AEC, No. 35 and ZVEI, No. 37 pgs. 2–3.). GE Motors, NEMA and ACEEE, however, assert that corrections and modifications to IEEE Standard 112–1996 Test Method B should be accomplished instead through the voluntary standards making process (GE, No. 39, and NEMA/ACEEE, No. 38). NEMA and ACEEE oppose the Department's making any modifications or corrections to the IEEE Standard 112–1996 Test Method B on grounds that such changes could (1) unnecessarily lengthen the time for completion of the final rule for motors; (2) differ from

changes which might be made by IEEE; (3) delay manufacturers from certifying compliance and disrupt laboratory accreditation programs; and (4) create confusion in the industry because there would be two versions of IEEE Standard 112, one for electric motors covered by EPCA and one for motors not covered by EPCA. NEMA and ACEEE also assert that the many typographical errors and provisions subject to interpretation have been dealt with by motor manufacturers and are not a problem. NEMA and ACEEE recommend that the Department adopt IEEE Std 112–1996, with the January 20, 1998 revision, and without the corrections and modifications proposed in the reopening notice (NEMA/ACEEE, No. 38). GE Motors agrees with the Department that typographical errors in IEEE Standard 112 should be corrected, but asserts that instead of changing the IEEE Standard 112 Test Method B for use under EPCA, the Department should communicate its understanding of the needed corrections and modifications to the National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program (NIST/NVLAP) for application in its proficiency testing program for electric motors. (GE, Nos. 39, 46). IEEE submitted the Department's June 25, 1998, reopening notice to the IEEE Induction Machinery Subcommittee for its review and recommendations, and stated that it would ''take any action deemed necessary to update or amend'' IEEE Std 112–1996. But IEEE did not indicate when it would address the points in the reopening notice. (IEEE, No. 34).

The Department understands that IEEE typically updates its standards approximately every five years, and that the next revision of IEEE Std 112–1996 is scheduled for the year 2001, although it might be published in the year 2000. (Martiny/Knab, No. 41; IEEE, No. 46). In the Department's view, this would be too great a delay in correcting IEEE Standard 112 for use under EPCA. The Department also understands industry concern that, subsequent to any changes the Department would make, IEEE might make different changes to IEEE Standard 112. Nevertheless, if and when such changes are forthcoming from IEEE, the Department will essentially be required, under section 343(a)(5)(B) of EPCA, to incorporate such changes in to the DOE test procedures under EPCA, unless the Secretary properly determines otherwise. In regard to laboratory accreditation programs, any changes to IEEE Standard 112 Test Method B for purposes of EPCA would be applied, for consistency, in the NIST/NVLAP accreditation program. NIST/NVLAP has advised DOE, however, that the changes in today's final rule would not affect existing or future NIST/NVLAP accreditations of laboratories to test motors for energy efficiency. (NIST/NVLAP, No. 45). As to the assertion that the typographical errors and procedures subject to interpretation are not problematic, use of IEEE Standard 112 has been voluntary until recently. But under today's rule, it will be mandatory, and will be the basis for determining whether manufacturers are complying with EPCA and can sell their products. When a test procedure is used in this type of mandatory environment, there is greater need than in a voluntary environment for it to be precise and uniformly applied.

Upon consideration of the comments received and further review of the issues, the Department continues to believe, for the reasons stated in the reopening notice and this notice, that IEEE Std 112–1996 Test Method B should be adopted as the EPCA test procedure for electric motors, but with certain modifications and corrections. The Department emphasizes, however, that such modifications and corrections in today's rule do not fundamentally or extensively alter IEEE Std 112–1996 Test Method B. Rather, these changes are essentially technical corrections and interpretations of Test Method B, which fine tune and clarify it, will enable it to work better, and realize the intent of the test procedure. The Department disagrees with the claims that these changes will delay compliance certification or create a second version of IEEE Standard 112 that will cause confusion. Instead, the test procedure in today's rule in essence conforms to IEEE Std 112–1996. Furthermore, as demonstrated by the discussion in this notice and in the reopening notice, absent the changes contained in this rule, IEEE Std 112–1996 Test Method B would not be reasonably designed to produce results that reflect energy efficiency and would be unduly burdensome to conduct. Consequently, changes in Test Method B, as described in the following passages, are incorporated into today's rule.

a. Typographical Errors

Page 17, subclause 6.4.1.3, No-load test, currently reads: ''See 5.3 including 5.33, * * *.'' In today's final rule, this reference is changed to read: ''See 5.3 including 5.3.3, * * *.''

Page 48, item (24), the formula for shaft power in watts, currently reads: ''Is equal to [(23) • (11)]/k_2'', but the constant k_2 is not defined. At section II.A.1.b. of the reopening notice, the Department proposed to correct the constant ''k_2'' in item (24) to the constant ''k''. The formula in item (24) would then read: ''Is equal to [(23) • (11)]/k''. 63 FR 34759 (June 25, 1998). Also, page 48, item (29) currently reads: ''See 4.3.2.2 Eq. 4.'' The Department stated, at section II.A. 2.c., that such reference to equation (4) in subclause 4.3.2.2, *Slip correction for temperature,* without explanation, could cause confusion and errors, since the terms in equation (4) used to correct slip measurements to the specified stator temperature, are defined differently from similar terms used in 10.2 Form B. 63 FR 34760 (June 25, 1998).

NEMA and ACEEE assert that it is preferable to change the constant ''k'' in item (22) to ''k_2'' since this would follow in sequence the previous appearance of the constant ''k_1'' in item (16). Such a change would also eliminate some of the confusion the Department notes in section II.A.2.c. of the reopening notice, concerning the different definitions given for ''k'' in subclause 4.3.2.2 and ''k'' in item (22) on page 48, since ''k'' would no longer be included in item (22). (NEMA/ACEEE No. 38 at pg. 2).

The Department understands that there is not a consistent definition of terms throughout IEEE Std 112–1996. For example, the term ''k'' is used in sections 4.3.1, 7.2.2, 7.3.2.1, 7.3.2.2, 7.3.2.3, 10.1 and 10.2 of IEEE Std 112–1996 to convert power in watts to torque, and in sections 4.2.3, 4.3.2.2 and 8.3.3 as the temperature intercept for computing the resistance. The term ''k'' without subscripts in IEEE Standard 112 is used often to mean different things, and therefore it has been the practice to define its meaning within each section where it is used. (NIST/NVLAP, No. 45). The Department believes that the NEMA and ACEEE change has merit and would eliminate some of the confusion described in sections II.A.1.b. and II.A.2.c. of the reopening notice, both with page 48, item (24) in the formula for shaft power in watts, and subclause 4.3.2.2 equation (4). 63 FR 34759. Therefore, in lieu of the change proposed by the Department in its reopening notice for page 48, item (24), the Department will change the torque constant at page 48, item (22) of IEEE Standard 112 Test Method B, from ''k'' to ''k_2'', in today's final rule. The term ''k_2'' at item (22) would then read: ''k_2 = 9.549 for torque, in N•m'' and ''k_2 = 7.043 for torque, in lbf•ft.'' Both the formula at page 48, item (24), and the constant ''k'' for conductivity at page 7, subclause 4.3.2.2 equation (4), are adopted without change from the IEEE Std 112–1996 Test Method B.

b. Provisions Subject to Interpretation

Page 8, subclause 5.1.1, ''Specified temperature'' provides three methods, listed in order of preference, to determine the ''specified temperature'' used in making resistance corrections: (a) measured temperature rise by resistance from a rated load temperature test; (b) measured temperature rise on a duplicate machine; and (c) use of a temperature correction table when rated load temperature has not been measured. The Department understands that only options ''a'' or ''b'' in subclause 5.1.1 are applicable to Test Method B. Information provided to the Department indicated, however, that option ''c'' is being misapplied to Test Method B. Therefore, at section II.A.2.a. of the reopening notice, the Department sought comment on whether its test procedure rule should incorporate into subclause 5.1.1 the following language: ''(Method B only allows the use of preference a) or b).)'' 63 FR 34759–60 (June 25, 1998).

AEC supports the Department's suggested modification of section 5.1.1. AEC agrees that a complete and thorough reading of IEEE Standard 112–1996 would make it clear that preference ''c'' is not compatible with Test Method B, as the Department argues at section II.A.2.a. of its reopening notice, 63 FR 34760 (June 25, 1998). However, AEC asserts that IEEE Standard 112–1996 is frequently used as a reference document where only a few clauses are reviewed at a given time, and that the proposed modification would preclude the inadvertent application of ''c'' to Test Method B. (AEC, No. 35 at pg. 2). Also, Underwriters Laboratories, Lincoln Electric, and NIST/NVLAP agree with the proposed revision to make clear at subclause 5.1.1 that only options ''a'' or ''b'' are applicable to Test Method B. (UL, No. 43, Lincoln, No. 44, and NIST/NVLAP, No. 45).

The Department concludes, based on the aforementioned comments, that the proposed change is warranted and would eliminate the possibility of misinterpreting subclause 5.1.1, which could lead to distortion of efficiency values by misapplication of option ''c.'' Consequently, in today's final rule, the Department incorporates into the first sentence of subclause 5.1.1 the following language: ''(Test Method B only allows the use of preference a) or b).)''

Page 47, the procedure to measure temperature in item (4) *Rated Load Heat Run Stator Winding Temperature* is not defined. Information in the footnote at the bottom of page 47, 10.2 Form B, indicates that the temperature for item (7), which is used as a basis for the temperatures in items (4), (27), and (16), can be either determined from a temperature detector or derived from measurement of the stator resistance during the test. The Department proposed, at section II.A.2.b. of its reopening notice, 63 FR 34760 (June 25, 1998), that the method of measuring both items (4) and (7) be consistent. There were no comments to the contrary. NIST/NVLAP concurs that the modification to the footnote is appropriate and will not affect its accreditation of laboratories. (NIST/NVLAP, No. 45). Therefore, the Department will, in today's final rule, incorporate a second sentence to the footnote at the bottom of page 47, 10.2 Form B, to read: ''The values for t_s and t_t shall be based on the same method of temperature measurement, selected from the four methods in subclause 8.3.''

Page 48, item (27) defines Stator I^2R Loss, in W, at (t_s)°C, and item (29) defines Corrected Slip, in r/min, on IEEE Std 112–1996 10.2 Form B. Page 48, item (29) currently reads: ''See 4.3.2.2, Eq 4.'' The Department believes that such reference, without explanation, to equation (4) in subclause 4.3.2.2, *Slip correction for temperature,* can cause confusion and errors, since the terms in equation (4) used to correct slip measurements to the specified stator temperature are defined differently from similar terms used in 10.2 Form B. As set forth at section II.A.2.c. of the reopening notice, based on its examination of 10.2 Form B and supporting sections of IEEE Standard 112, the Department proposed the following modifications to clarify the temperatures to be used for correcting the stator and rotor loss: (1) at the top of 10.2 Form B and below the line that defines ''rated load heat run stator winding resistance,'' insert a new line that will define ''t_s'' as it is defined in 6.4.3.2 and 6.4.3.3: ''Temperature for Resistance Correction (t_s) = ____ °C (See 6.4.3.2);'' (2) add a note at the bottom of 10.2 Form B to read: ''NOTE: The temperature for resistance correction (t_s) is equal to [(4) − (5) + 25°C];'' (3) add the reference ''see 6.4.3.2'' to the end of item (27) on page 48; and (4) change item (29) on page 48, which presently states ''See 4.3.2.2, eq. 4,'' to state: ''Is equal to (10) • [k_1 + (4) − (5) + 25°C] / [k_1 + (7)], see 6.4.3.3''. 63 FR 37460–1 (June 25, 1998).

There were no objections to the proposed clarifications of temperatures to be used for correcting stator and rotor loss. The Department concludes that the proposed modifications will reduce confusion and errors in the IEEE Test Method B, and therefore incorporates the aforementioned modifications into today's final rule.

Page 48, item (32), the equation to correct stray-load loss currently reads: ''Is equal to AT^2 where A = slope of the curve of (26) vs. $(23)^2$ using a linear regression analysis, see 6.4.2.7,'' and ''T = corrected torque = (23).'' In the reopening notice, the Department states both its concerns about this equation as well as considerations supporting use of the equation as written. The Department stated that it intends to adopt IEEE Std 112–1996, subclause 6.4.2.7, *Smoothing of the stray-load loss,* without change, but is still considering the option of making the change to add a restriction on the allowable value of the intercept. Also, the Department invited the submission of data that would show if any significant differences do occur between the final determined value of efficiency at 100 percent rated load, for various values of the stray-load loss intercept in repeated tests of the same motor. 63 FR 34761–62 (June 25, 1998).

AEC supports the modification to subclause 6.4.2.7 to add a restriction on the allowable value of the y intercept, and advises the Department that it finds such a check to be useful in verifying the validity of test data. (AEC, No. 35 at pg. 2).

ZVEI cites problems with the influence of a systematic measurement error on determined stray load losses, and rejects modification to the equation to correct stray load loss on the basis that it would only offset stochastic measurement errors. (ZVEI, No. 37 pgs. 2–3.).

The Department has been advised that it would be premature to require the absolute value of B to be less than 10 percent of the total loss. (NIST/NVLAP, No. 45). During the NIST/NVLAP accreditation process this limit on the absolute value of B was not a requirement. However, the data from some demonstration tests made during the on-site inspections of the laboratories requesting accreditation were all well within the 10 percent limit discussed in the reopening notice. The Department believes that future investigation of this subject is warranted. Presently, however, there is insufficient data available to support a specific limit for the value of B. Therefore, the Department will incorporate, into today's final rule, IEEE Std 112–1996, subclause 6.4.2.7, *Smoothing of the stray-load loss,* without change. Nevertheless, the Department continues to be interested in receiving data on this subject for

future consideration of a restriction on the allowable value of the intercept.

Page 17, subclause 6.4.1.3, ''No-load test,'' in the second sentence, currently reads: ''Prior to making this test, the machine shall be operated at no-load until both the temperature and the input have stabilized.'' Information provided to the Department indicated that the requirements for temperature and input stabilization during the no-load test appear to be undefined and could cause confusion. To clarify the pertinent subclause for temperature stabilization, the Department proposed, at section II.A.2.e. of the reopening notice, to modify the second sentence in 6.4.1.3 to read: ''Prior to making this test, the machine shall be operated at no-load until both the temperature has stabilized (see 8.6.3) and the input has stabilized.'' 63 FR 34762 (June 25, 1998).

AEC disagrees with the Department's proposal to modify subclause 6.4.1.3 by specifying temperature stabilization per subclause 8.6.3. AEC asserts that subclause 8.6.3 is a temperature stabilization definition for determining the end of a rated-load heat-run, is much too stringent a requirement for the no-load test, and would add approximately two hours of testing time to each motor test. Also, according to AEC, the proposed modification would create confusion with the execution of no-load stabilization, as defined in sections 5.3 and 4.3.1.1 of IEEE Standard 112 Test Method B. AEC suggests that subclause 6.4.1.3 be modified to omit the reference to temperature stabilization, i.e., remove the words ''both the temperature and the input have,'' and replace them with ''the input has.'' AEC explains that subclause 6.4.1.3 already references subclause 5.3, *Core loss and stabilization,* which defines ''power stabilization.'' AEC asserts that its modification will retain the ''power stabilization'' component, produce consistent, repeatable test results, and make subclause 6.4.1.3 consistent with subclauses 5.3 and 4.3.1.1, as well as with the no-load test as defined in IEEE Std 112–1991 Test Method B.

Further, AEC asserts that there is no need for temperature stabilization as part of a no-load test, based upon indications that the reference to ''temperature stabilization at no-load'' in subclause 6.4.1.3 was not one of the IEEE Induction Power Subcommittee's proposed changes in drafting IEEE Std 112–1996 Test Method B. (AEC, No. 35 and Martiny, No. 42). The Department has been advised through NIST/NVLAP that laboratories testing motors according to IEEE Standard 112–1996 Test Method B typically interpret subclause 6.4.1.3 to require only that the input watt reading not vary over 3 percent, and to disregard any requirement for temperature stabilization. (NIST/NVLAP, No. 45). Since the no-load test is made after the load test and dynamometer correction test, the motor is usually substantially below rated temperature and the temperature changes are small with time. Consequently, the Department withdraws its proposed modification, at section II.A.2.e. of the reopening notice, to include ''temperature stabilization'' in subclause 6.4.1.3 of the IEEE Standard 112 Test Method B. Instead, the Department is persuaded by AEC's comments to modify the second sentence in 6.4.1.3 and will incorporate the following into today's final rule: ''Prior to making this test, the machine shall be operated at no-load until the input has stabilized.'' (AEC, No. 35). The Department believes the modification provided by AEC will eliminate the confusion with subclause 6.4.1.3, which is identified at section II.A.2.e. of the reopening notice, and will not be unduly burdensome on manufacturers.

c. Incorrect Information

Page 40, subclause 8.6.3, Termination of test, the first and third sentences currently read: ''For continuously rated machines, readings shall be taken at intervals of ½ h[our] or less. * * * For continuous rated machines, the temperature test shall continue until there is 1 °C or less change in temperature rise between two successive readings.'' As written, however, this language allows temperature readings to be taken at intervals as brief as five seconds, for example. If such short intervals are used, there could be little or no rise in temperature between any two consecutive readings, even if the motor temperature is actually still rising. Consequently, the motor's temperature could be misconstrued as being stable. The Department proposed, at section II.A.3. in the reopening notice, to change the third sentence in subclause 8.6.3 (the second clause quoted above) to read: ''For continuous rated machines, the temperature test shall continue until there is 1 °C or less change in temperature rise over a 30-minute time period.''

NIST/NVLAP concurs with the proposed change to subclause 8.6.3, because it is consistent with the manner in which accredited laboratories are interpreting the temperature measurement procedure. (NIST/NVLAP, No. 45). No comments were received to contradict this proposed change and for the reasons stated in the reopening notice, the Department adopts this proposed change in today's final rule.

d. Summary

In sum, the Department is convinced that there is sufficient evidence to warrant use of IEEE Std 112–1996 Test Method B, with the aforementioned corrections, and no substantial evidence to the contrary. Such corrections would provide an accurate measurement of the energy efficiency of the motor being tested, and a measurement that is repeatable from one test to the next of the same motor or comparable motors. In addition, the Department believes that, with these corrections, manufacturers would not be burdened by having to resolve problems related to typographical errors, unclear provisions, and unnecessary references to other parts of IEEE Standard 112. Therefore, the Department incorporates, into today's final rule for motors, the test procedures in IEEE Std 112–1996 Test Method B, the correction to the calculation at item (28) in section 10.2 Form B-Test Method B issued by IEEE on January 20, 1998, and the aforementioned corrections and modifications.

C. Determination of a Motor's Efficiency: Use of Accredited Laboratories and Certification Programs, Selection of Basic Models for Testing, Alternative Means To Measure Efficiency, and Sampling Plans for Testing

1. Summary of DOE's Proposals

Section 343(a)(2) of EPCA, 42 U.S.C. 6314(a)(2), requires that the test procedures prescribed for electric motors by DOE be ''reasonably designed to produce test results which reflect energy efficiency,'' yet not be ''unduly burdensome'' to conduct. As per the proposed rule at 10 CFR 431.24, *Units to be tested,* a manufacturer would initially determine the efficiency of at least five basic models by testing, and of its remaining models either by testing or by use of an Alternative Efficiency Determination Method (AEDM). 61 FR 60466–67 (November 27, 1996). (Such testing to initially determine efficiency is referred to as ''compliance testing.'') Section 431.24 provides (1) criteria for deciding which basic models should undergo compliance testing, (2) a sampling plan for determining, for each such basic model, how many and which units must be tested, (3) criteria for the acceptability of an AEDM, including a requirement that the AEDM be substantiated by applying it to five basic models that have been tested for efficiency, and (4) requirements for

subsequent verification of an AEDM. Under section 431.25 of the proposed rule, the efficiency of a basic model must be either certified by a third-party certification organization, or based on testing (compliance testing and, where an AEDM is used, testing to substantiate the AEDM) that has been conducted in an accredited laboratory.

As per the proposed 10 CFR 431.127, *Enforcement,* the Department would ascertain in an enforcement proceeding, which could include testing (''enforcement testing''), whether a motor complies with the applicable energy efficiency standard and with the labeled value of efficiency. 61 FR 60472, 60474–75 (November 27, 1996). Proposed section 431.27 includes a sampling procedure for enforcement testing.

In the reopening notice, the Department proposed for consideration that the final rule prescribe neither criteria for selecting the basic models for compliance testing, nor a sampling plan for such testing, when a motor's efficiency is certified by a certification program. The Department also stated that it was considering adoption of revised sampling plans for compliance and enforcement testing, and of provisions for withdrawal of DOE recognition from an accreditation organization or certification program that deviates from the standards for recognition.

Many provisions of the proposed rule were the subject of little or no comment or dispute, including (1) the requirement that a manufacturer determine through testing the efficiency of five or more basic models (proposed section 431.24(a)), (2) allowing the use of AEDMs for other basic models (proposed section 431.24(a)), (3) the criteria for an AEDM (proposed section 431.24(a)(2)), (4) the basic approach in Section 431.24(a)(3) for establishing the accuracy and reliability of an AEDM, and (5) the provisions for subsequent verification of an AEDM (proposed section 431.24(b)(4)). The following addresses matters on which significant comments were received.

2. Issues Involving Both Use of Accredited Laboratories and Use of Certification Organizations

EPCA directs the Department to ''require manufacturers to certify through an independent testing or certification program nationally recognized in the United States, that [any electric motor subject to EPCA efficiency standards] meets the applicable standard.'' EPCA section 345(c), 42 U.S.C. 6316(c). Consistent with the approach in DOE's program concerning the energy efficiency of residential appliances, section 431.123 of the proposed rule provides that a manufacturer must certify to DOE the compliance and the efficiency levels of the electric motors it manufactures. 61 FR 60471 (November 27, 1996). The proposed rule meets the statutory mandate that certification be ''through'' an independent testing or certification program by requiring a manufacturer to *base* its certification on use of such a program, i.e., a manufacturer must use an independent testing program or a certification program to establish a motor's efficiency level and compliance, which it then certifies to DOE. See 61 FR 60458 (November 27, 1996).

To satisfy the intent of the ''independent testing'' provision of Section 345(c) of EPCA, and given the relative paucity of independent testing laboratories, the Department proposed that a manufacturer be permitted to establish compliance based on testing carried out in a laboratory accredited by a nationally recognized program such as the National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program (NIST/NVLAP). The laboratory could be the manufacturer's own laboratory. As required under section 345(c), the Department also permits a manufacturer to certify compliance based on its participation in a certification program. 61 FR 60455–56, 60458, 60467 (November 27, 1996).

The majority of comments were supportive of these proposals. For example, the Association of Independent Scientific, Engineering and Testing Firms (''ACIL'', formerly the American Council of Independent Laboratories) supports the adoption of the proposed rule regarding test procedures and certification for energy efficiency of electric motors, and in particular, the Department's proposal to allow electric motor manufacturers three approaches for establishing compliance: testing in the manufacturer's accredited laboratory; testing in an accredited independent testing laboratory; or use of a third-party certification program (ACIL, No. 7 and Public Hearing Tr. Pgs. 123–124 [7]). However, some commenters expressed concern about these options for compliance certification.

Zentralverband Elektrotechnik- und Elektronikindustrie e.V. (ZVEI) asserts that the manufacturer's declaration should be the preferred method compared with third-party certification, and should also be accepted without requiring testing in an accredited laboratory. (ZVEI, No. 37, pg. 2–3). As to third party certification, on the one hand the proposed rule requires the manufacturer to certify compliance to DOE, a requirement that is retained in today's final rule. Thus, ZVEI appears to have the erroneous view that DOE treats third party certification as an alternative to a declaration by the manufacturer. As indicated above, the third party certification contemplated under today's rule is a *basis* for the manufacturer's declaration. On the other hand, section 345(c) of EPCA clearly directs the Department to require manufacturers to certify compliance through either a testing program or a certification program. A preference for one over the other might be barred by the statute, and, in any event, DOE believes such a preference is unwarranted at this time given the potential benefits from using a certification program. See 61 FR 60457 (November 27, 1996). Concerning accreditation, as noted above use of an accredited laboratory serves to satisfy the EPCA provision calling for ''independent'' testing, and a manufacturer's declaration in and of itself would not in DOE's view satisfy the intent of this provision. To the extent ZVEI is concerned that foreign manufacturers would be unfairly burdened by having to test in laboratories accredited in the United States, DOE notes that today's final rule permits testing at a laboratory accredited by an accreditation body having a mutual recognition arrangement with NIST/NVLAP.

Sterling Electric, Inc. supports the need for more than one choice when selecting an accrediting body or certification organization to fulfill the requirement for compliance with EPCA efficiency standards. (Sterling, No. 13). The ACIL is concerned that the NOPR refers to only two private organizations that could certify electric motors to the Department's efficiency standards, and asks that the final proposal not refer to any one certification body or accreditation body. (ACIL, No. 7.). These organizations were identified by a manufacturer, 61 FR 60457 (November 27, 1996), which added that it is not necessary to limit independent certification—that is, certification of energy-efficient electric motors by a nationally recognized program—to two particular certification organizations.

The apparent concern that the Department might limit a manufacturer to only certain choices when selecting an agency to accredit its testing

[7] ''Public Hearing, Tr. Pgs. 123–124,'' refers to the page numbers of the transcript of the ''Public Hearing on Energy Efficiency Standards, Test Procedures, Labeling, and Certification Reporting for Certain Commercial and Industrial Electric Motors,'' held in Washington, DC, January 15, 1997.

laboratory or to certify the efficiency of its motors is unfounded. Sections 431.26, *Department of Energy recognition of accreditation bodies,* and 431.27, *Department of Energy recognition of nationally recognized certification programs,* of the proposed rule essentially provide that *any* accreditation body or certification organization can request classification by the Department as being nationally recognized in the United States for the purposes of section 345 of EPCA. Section 431.25(a) of the proposed rule permits a certificate of conformity for a basic model of an electric motor to be obtained from any certification program classified by DOE as nationally recognized under section 431.27, and permits testing in any laboratory accredited by NIST/NVLAP, by a foreign organization recognized by NIST/NVLAP, or by an organization classified by the Department, pursuant to section 431.26, as an accreditation body. Thus, a manufacturer would be able to establish compliance with EPCA standards through its own choice of any testing laboratory or certification program that meets these standards. In this regard, the Department will make no change to today's final rule.

Comments from Reliance Electric Company encourage the Department to include a separate and clearly identified paragraph in the final rule which states the ''methods'' that can be used for determining compliance with EPCA. Reliance suggests the following: (i) actual testing of a basic model of electric motor, (ii) use of an alternative efficiency determination method (AEDM), and (iii) use of a third party certification agency (Reliance, No. 11 at pgs. 6 and 7). Reliance, in recommending ''methods,'' including actual testing, use of an AEDM, and a third party certification agency, also asserts that accreditation ''in and of itself, is not an actual means for determining compliance.'' (Reliance, No. 11, p. 7).

The Department believes Reliance is addressing two related issues: (1) accreditation should not be considered an optional ''method'; and (2) the Department should explicitly recognize certification programs as an option. As to Reliance's proposed methods, the Department questions whether a certification program is a method for determining compliance, comparable to testing and use of an AEDM, because a certification program often determines the efficiency of an electric motor using one or both of these approaches, as well as other methods. However, the Department agrees that accreditation is not a method for determining whether electric motors are in compliance. Rather it is a means for assuring that a laboratory can perform the test procedures, and that a manufacturer's efficiency representations, to the extent they are based on the laboratory's test measurements, are accurate and reliable. In this regard, use of an accredited laboratory serves a function very similar to use of a certification organization. In section 431.25(a) of the proposed rule, the Department's objective is to provide options for determining compliance to manufacturers faced with a small number of existing third party laboratories. These options will continue to be offered to manufacturers in today's final rule.

The Department agrees with Reliance that the use of a certification program as a means for determining compliance could be more explicitly stated. The Department is therefore re-organizing and revising Section 431.24 of today's final rule, and adopting additional language in Section 431.123(a), to make clear that a manufacturer can use such a program to establish the efficiency of its motors and as a basis for certifying to DOE that the motors comply with EPCA requirements.

NIST asserts that the proposed rule would create two different compliance procedures, accreditation and certification, with unequal criteria for determining compliance with energy efficiency requirements. (NIST, No.10 at section 2.). Statistical sampling procedures and test data, NIST contends, should be uniform and based on proficiency testing under a round-robin type program, to assure a common basis for determining whether a motor is in compliance. According to NIST, test facility competence would be based on the requirement of laboratory accreditation by NVLAP to assure confidence in test data, and the validity, reliability, reproducibility, and accuracy of test measurements. The Department understands that NIST advocates that all efficiency testing of motors under EPCA be performed in laboratories accredited by NVLAP, including testing that is under the auspices of a certification program.

The Department notes that accreditation is being required under today's rule to satisfy the intent of the ''independent testing'' provision of section 345(e) of EPCA, and that section 345(e) allows use of an ''independent certification program'' as an alternative means of establishing compliance. In addition, the Department understands that a certification program is a *continuous* assessment to assure that new products and subsequent production conform to specified requirements. Under a certification program, such as the ones conducted by Underwriters Laboratories (UL) or CSA International (CSA), a motor manufacturer's production and testing operations would be evaluated and representative samples of electric motors would be tested to applicable standards. Following an initial verification, follow-up audits of motors and on-going testing by the manufacturer would be required. Such programs are in compliance with Federal law in Canada, and are accredited by the Standards Council of Canada, with whom NVLAP holds an agreement of mutual recognition.

The issue is one of confidence, that is, confidence that a manufacturer's production units are being produced in conformance with EPCA requirements. The Department believes that use of an independent certification program without testing in an accredited facility will provide adequate assurance of compliance with EPCA's energy efficiency requirements. Consequently, the Department is adopting the options for determining compliance that were set forth in the proposed rule.

As mentioned above, Section 345(c) of EPCA requires that compliance be certified through a testing or certification program that is ''nationally recognized.'' The proposed rule, at sections 431.26 and 431.27, provides criteria and general procedures for DOE recognition of accreditation bodies and certification programs, to meet this requirement. These sections have been incorporated into the final rule virtually unchanged. In addition, section 431.28 of the final rule also adds specific procedures, including an opportunity for public participation, that the Department will follow in considering petitions for recognition under sections 431.26 and 431.27.

Neither of these sections, however, addresses a situation where DOE has classified an organization as an accreditation body, or as a nationally recognized certification program, and the organization subsequently ceases to comply with the conditions for such classification.[8] Therefore, in the reopening notice, 63 FR 34766 (June 25,

[8] One of the conditions stated in the proposed rule is that the organization must have ''standards and procedures'' for carrying out accreditation or a certification program. 61 FR 60467, 60468 (November 27, 1996). The proposed rule contemplates, at sections 431.26(d) and 431.27(d) for example, that this condition would be met only if the Department found acceptable the organization's standards and procedures for carrying out its program. The final rule reinforces and clarifies this point by adding the word ''satisfactory'' before ''standards and procedures'' in sections 431.26(b)(1) and 431.27(b)(1).

1998), the Department proposed to add provisions to (1) notify an accreditation body or a certification organization of failure to comply with the conditions of section 431.26 or 431.27, respectively, (2) request appropriate corrective action, (3) provide an opportunity to respond, and (4) withdraw recognition. Also, the Department proposed to permit an accreditation body or certification organization to withdraw itself from recognition by the Department.

NEMA and ACEEE support the Department's procedure for notification and corrective action. Further, NEMA and ACEEE recommend that the rule also require DOE to notify manufacturers that use an accreditation body or certification program that recognition will be withdrawn, and to allow time for the manufacturer to change its procedures for determining compliance. (NEMA/ACEEE, No. 38 at pages 6 and 7.) In section 431.28 of today's final rule, the Department includes provisions for withdrawing recognition from an accreditation body or certification organization, and for publishing in the **Federal Register** notice of such action. However, because the Department would often be unaware of which manufacturers are using a particular accreditation body or certification organization, the final rule contains no provision for the Department to directly notify them of its action.

The final rule also does not incorporate language to specifically ''allow time'' for a manufacturer to change its compliance procedures when recognition has been withdrawn from an accreditation body or certification organization it is using. To the extent NEMA and ACEEE are suggesting that, during a period after such withdrawal of recognition, the rule should permit a manufacturer temporarily to distribute an electric motor without certifying its compliance with the applicable standard, or to certify the motor without using an accredited laboratory or a recognized certification program, DOE believes a sufficient showing has not been made to justify such an approach. In addition, the proposed and final rules do not *per se* require a manufacturer to continuously maintain an accredited laboratory. And although they contemplate continuous participation in a certification program when such a program is used, no provision precludes a temporary lapse in such participation caused by a withdrawal of recognition. Hence, the Department believes that the final rule will allow a manufacturer a reasonable amount of time to replace an accrediting body or certification program that has lost its recognition. Finally, the Department's energy conservation program has not had experience with this type recognition requirement, and the Department is uncertain as to the effects of possible withdrawals of recognition. For these reasons, the Department will address consequences to manufacturers of withdrawals of recognition on a case by case basis, as necessary, rather than by including specific language on this issue in today's final rule. DOE will consider amending the rule to include such language only if experience indicates a need to do so.

3. Issues Concerning Use of Certification Organizations

As discussed above, proposed section 431.24 prescribes for compliance testing (including testing to substantiate an AEDM) criteria for selecting basic models for testing, and a sampling plan for picking the particular units to be tested. These requirements apply both when a manufacturer establishes a motor's efficiency without using a certification program (i.e., required testing is performed in an accredited laboratory), and when a manufacturer uses a certification program. 61 FR 60466–67 (November 27, 1996).

In their comments on the NOPR, both NEMA and Reliance Electric asserted that DOE should not impose its sampling plan for compliance testing when a manufacturer uses a certification program to establish compliance. They stated that such a program's own testing and sampling procedures will give adequate assurance of the accuracy of any reported efficiency level, and NEMA recommended that the Department review and approve a certification program's testing procedures before according the program ''nationally recognized'' status for purposes of EPCA. (Reliance, No. 11 at pg. 7; NEMA, No. 18 at pgs. 8–9). Recognizing that these contentions had merit, in the reopening notice the Department proposed that, when a manufacturer establishes a motor's efficiency under EPCA through a certification program, the final rule would not require use of the rule's criteria for identifying basic models for compliance testing, or its sampling provisions for selecting units for such testing. 63 FR 34765 (June 25, 1998). In addition, DOE proposed that review and approval of a certification program's criteria for selecting basic models for testing, and its sampling plan, would be included in the Department's evaluation of whether to grant a program ''nationally recognized'' status for purposes of EPCA. The NEMA comments support these DOE proposals (NEMA, No. 38 at C., pages 4 and 5), and they are incorporated into today's rule.

NEMA also asserts that ''DOE should accept existing certifications that are in good standing'' when the final rule is published. (NEMA, No. 38 at C., page 5.). Initially, the Department notes that a third party certification would not normally be provided to it. Rather, under section 431.123 of today's final rule, each manufacturer must submit its own Compliance Certification(s) to DOE, although such Certification may be *based on* an efficiency certification provided by a certification program. Consistent with NEMA's suggestion, however, under both the proposed and final versions of section 431.123, the Compliance Certification may contain motor efficiency information developed before the effective date of the rule. Thus, a Compliance Certification could be based on a third-party efficiency certification that (1) was issued by a DOE-recognized certification program prior to the effective date of the rule, (2) was based on use of the criteria and procedures incorporated into the rule, and (3) remains in effect at the time of the Compliance Certification. This assumes, of course, that information in the third-party certification supports the representations in the Compliance Certification. Moreover, the certification organization used by the manufacturer must receive recognition from DOE under section 431.27 after the effective date of the rule, even though it met the criteria for such recognition before the effective date of the rule. In sum, the Department does not intend to conclude that a Compliance Certification violates 431.123 solely because the applicable determinations underlying the Certification, such as those described in section 431.123(b)(1)(ii), were made before the effective date of the rule.

Proposed section 431.25(a), *Testing laboratories*, provides in essence that all testing of a basic model to meet the requirements of section 431.24, *Units to be tested*, shall be carried out in an accredited laboratory, *unless* a certificate of conformity for that basic model is obtained from a certification program classified by DOE as nationally recognized. 61 FR 60467, 60468–69 (November 27, 1996). This applies, for example, to testing required by proposed section 431.24(b)(3) to substantiate an AEDM. Under these provisions, therefore, when a manufacturer uses a certification program to establish the efficiency of a basic model, testing of the basic model, including testing used to substantiate an AEDM, would not need to be performed in an accredited laboratory. Reliance

Electric asserts that the proposed rule is unclear on this point. (Reliance, No.11 at pgs 5 and 6; see ACEEE/NEMA, No. 38 at pg. 5). The Department has revised proposed sections 431.24 and 431.25 in the final rule to further clarify that testing of a basic model to substantiate an AEDM need not be in an accredited laboratory when a certification program certifies the basic model's efficiency.

Reliance Electric also agrees with the proposal that five basic models be tested as part of the initial substantiation of an AEDM, but that the methods for initial substantiation of an AEDM under section 431.24(b)(3) should otherwise be the same as the methods permitted under section 431.24(b)(4)(i)(A)–(C) for subsequent verification of an AEDM. (Reliance, No.11 at pgs. 5 and 6). Two of the methods permitted for such subsequent verification are testing in an accredited laboratory and use of a certification organization. As indicated above and as the final rule makes clear, both can be used to initially substantiate an AEDM. The third method for subsequent verification of an AEDM, however, is the use of a professional engineer, and the Department does not agree it is appropriate for initial substantiation of an AEDM.

First, the Department believes that initial substantiation of an AEDM should be inherently stringent because an AEDM could underlie compliance determinations for many motors. The Department believes that such stringency will exist when the initial substantiation of an AEDM is based on testing in an accredited laboratory that meets the requirements of section 431.25, or on use of a certification program classified by DOE as nationally recognized under section 431.27. However, having a professional engineer review the results of the manufacturer's testing, and initially certify the accuracy of the AEDM, would not be as inherently rigorous, or provide the same likelihood of uniform results. Both the proposed and final rules allow the use of a professional engineer for verification of an AEDM because that would be only a check on the initial determination of the AEDM's validity, and would be applied to a limited number of basic models. In addition, the provisions in DOE's rule for initial substantiation of an AEDM implement the statutory requirement for a manufacturer to certify, through an independent testing or certification program nationally recognized in the United States, that an electric motor meets the applicable efficiency standard. It appears to the Department that use of a professional engineer for initial substantiation of an AEDM would fail to meet this statutory requirement. A professional engineer neither carries national recognition nor is the equivalent of a certification program, and proposed section 431.24(b)(4)(i)(C) does not require the professional engineer to perform testing.

Finally, the Department proposed in the reopening notice to require that, when a motor's efficiency rating is derived from use of an AEDM, the AEDM could not be subsequently verified by the certification organization that had initially certified the motor's efficiency rating. 63 FR 34765 (June 25, 1998). NEMA and ACEEE jointly assert that DOE should permit the use of the same certification organization for both substantiation and verification of an AEDM. To require one certification organization to be used for substantiation and a different one for verification of an AEDM would cause manufacturers to participate in multiple certification programs to accomplish the same thing. (NEMA/ACEEE, No. 38 at page 5). The Department understands, from the NEMA/ACEEE comments, that the proposal contemplated in the reopening notice would be burdensome for manufacturers. Therefore, the Department will not adopt this proposal in the final rule.

4. Compliance Testing When a Manufacturer Does Not Use a Certification Program (Independence and Performance of an Accredited Laboratory, Selection of Basic Models for Testing, Sampling Plan) and Enforcement Testing Sampling Plan

a. Accredited Laboratories

As discussed above, the Department proposed that a manufacturer could meet the statutory provision for certification through an ''independent testing program'' by using a laboratory, operated by either a third party or the manufacturer, that has been accredited to perform the DOE test procedures. Commenting on the meaning of ''independence,'' ACIL opines that the proposed rule implies that once a laboratory is accredited, its independence is assured. ACIL asserts that while accreditation assures a laboratory's technical competence, and that testing will be conducted free from certain marketing pressures, it does not mean that the laboratory is autonomous. (ACIL, No. 7., and Public Hearing, Tr. pgs. 124–131.).

Independence is a criterion, used for example under NVLAP accreditation procedures, to verify that a laboratory is able to ''maintain an independent decisional relationship between itself and its clients, affiliates, or other organizations so that the laboratory's capacity to render calibration or test reports objectively and without bias is not adversely affected.''[9] The Department believes this means that an accredited laboratory will be independent in the sense that it will perform tests without influence ''by marketing and production concerns,'' and ''with assurance that test results are accurate, valid, and capable of being replicated.'' 61 FR 60455 (November 27, 1996). The Department agrees with ACIL that accreditation assures technical competency, and does not confer on a laboratory independence in the sense of autonomy.

WSU/WSD expressed concern about a manufacturer's own (accredited) laboratory sufficing as an ''independent'' laboratory. WSU/WSD posited that if subsequent testing by outside laboratories finds efficiencies being overstated, then the manufacturer's laboratory should be subject to disaccreditation. (WSU/WSD, No. 5, p.6).

Section 431.26 of the proposed rule provides criteria and procedures by which the Department of Energy would recognize an accreditation body. To meet the conditions of proposed section 431.26, the accreditation body would have to assume the responsibility (1) to periodically audit and review a testing laboratory to verify continued compliance with the conditions of its accreditation, and (2) to make provision for withdrawal of accreditation where a testing laboratory fails to comply with the conditions of its accreditation, including failure to provide accurate test results. Similarly, section 285.24, ''Denying, suspending, and revoking accreditation,'' implicitly makes such provision in the NIST/NVLAP Handbook 150, ''Procedures and General Requirements.'' Furthermore, under section 285.22(b)(7) of ''Assessing and evaluating a laboratory'' in NIST/NVLAP Handbook 150–10, ''Efficiency of Electric Motors,'' where problems are indicated by proficiency testing and the test laboratory fails to resolve the problems in a timely manner, NIST/NVLAP may revoke or suspend its accreditation of that laboratory. In the final rule, the Department has added language to section 431.26 to explicitly provide that, to be recognized by DOE, an accreditation body must periodically audit laboratories it accredits, and withdraw accreditation from those that do not adhere to the conditions of their

[9] NIST Handbook 150, *National Voluntary Laboratory Accreditation Program Procedures and General Requirements* March 1994, section 285.32(a)(10), pg. 20.

accreditation. Moreover, where a manufacturer has certified its electric motors to be in compliance with EPCA energy efficiency standards based on testing in an accredited laboratory, including its own laboratory, and subsequently its motors are determined not in compliance under section 431.127, ''Enforcement,'' that manufacturer would be required, for example, to immediately cease distribution in commerce of that basic model motor, under section 431.128 of the rule.

b. Selection of Basic Models for Testing

Proposed section 431.24(b)(1)(i)–(ii) provides criteria that a manufacturer must use to decide which basic models to test. Subsection 431.24(b)(1)(i)(A) states that two of the basic models selected for testing must be among the five basic models with the highest unit volumes of production by the manufacturer in the prior year. Washington State opines that the unit volume should be horsepower weighted, otherwise there would be a bias toward the more numerous small motors. Also, Washington State asserts that the Department of Energy should retain the right of selecting basic models, whether to verify compliance through actual testing or application of an alternative efficiency determination method. (WSU/WSD, No. 5 at pg. 6, items II.P. and Q.).

The Department expects that the basic models with the highest unit volumes of production would be those in the lower horsepower ratings. If the Department were to require *all* basic models selected for testing to be from those with the highest unit volumes of production, then Washington State's concern might be significant. However, only two of the basic models selected must be from those with the highest unit volumes of production. Other criteria for selection are that the basic models be of different horsepowers and different frame series. Thus, for example, under today's final rule, the two basic models with the highest volume of production must, if possible, span two different frame series. (See discussion below on use of frame series rather than frame size.) Therefore, the Department declines to adopt the WSU/WSD suggestion to weight by horsepower the basic models for testing under section 431.24(b)(1)(i)(A) of today's final rule. Furthermore, because it would not be feasible for the Department to select models for compliance testing, it does not intend to retain the right to make such selection as suggested by WSU/WSD. Nevertheless, under the final rule the Department of Energy can select models for testing to verify an AEDM under section 431.24(b)(5)(iii), and can direct enforcement testing of any basic model if warranted under section 431.127 of today's final rule.

Also, Reliance Electric opines that the requirement in proposed section 431.24(b)(1)(i)(A), that basic models selected based on production during the ''prior year,'' might be inappropriate for the initial years in which 10 CFR Part 431 for electric motors becomes effective. For example, according to Reliance Electric, selection by a manufacturer in 1998 of the basic models produced in the highest unit volumes by that manufacturer in 1997 might include basic models which have efficiencies below EPCA levels. Consequently, the basis of substantiation of the AEDM would be dependent on basic models with efficiency levels that can no longer be manufactured for sale in the United States. (Reliance, No. 11 at pg. 1).

Had this rule gone into effect prior to the latter part of 1998, Reliance's point would have been well taken. EPCA's efficiency standards, however, became applicable to electric motors on October 24, 1997, and by the time this rule becomes effective the standards will have been in effect for most motors for at least a year. Moreover, because today's rule does not require manufacturers to certify compliance until 24 months after its effective date, the Department presumes that most testing covered by this part of the rule (i.e., testing in accredited laboratories) will occur during calendar year 1999 or later. Therefore, it is unlikely that models selected for testing under this criterion would have efficiency levels below EPCA levels. Nevertheless, some manufacturers might have begun testing prior to the end of 1998, and the Department in its Policy Statement acknowledges the possibility that some motors could continue to be manufactured in non-compliance with EPCA standards after October 1998. Therefore, today's rule allows manufacturers that began testing in 1998 to select units for testing under this criterion based on 12 months of production that begins on November 1 or December 1 of 1997, and provides that no motor manufactured in noncompliance with EPCA standards, pursuant to the Policy Statement or otherwise, shall be considered under this criterion.

The Department has also reviewed section 431.24(b)(1)(i)(C) and has determined that motors selected for testing should be from different *frame number series,* rather than frame *sizes,* when possible. (Frame series designations are set forth in NEMA MG1 Table 11–1, *Medium Machine Frame Numbering.*) Motors such as a 143T and 145T, for example, are different frame sizes but are in the same frame series and are quite similar in size, whereas 143T and 182T, for example, are in different frame number series and are very different in size. Under the proposed rule, a manufacturer could test motors that are all similar in size, by selecting motors in one or possibly two frame series. This would defeat the Department's goal of having a manufacturer establish compliance by testing a range of motor sizes. Also, because there are only nine frame number series covered by EPCA, requiring tested basic models to be from different number series, when possible, could cover over half of the sizes of motors made by any manufacturer. The Department understands that this would include a greater percentage of the product line for manufacturers not producing motors over the full range of ratings covered by EPCA. The Department also believes that selecting basic models based on different frame number series would show an AEDM to be accurate over a wider range of motors to which it is applied, thereby covering a greater expanse of basic models produced and without adding burden to the manufacturer. Therefore, the Department modifies proposed section 431.24(b)(1)(i)(C) to read ''frame number series'' in today's final rule.

c. Sampling Plans for Compliance and Enforcement Testing

Sampling plans for compliance and enforcement testing are at proposed sections 431.24 and 431.27(c), respectively. They are intended to provide statistically meaningful sampling procedures for conducting tests, so as to reduce the testing burden while giving sufficient assurance (1) in the case of the compliance plan, that the true mean energy efficiency of a basic model (i.e., the average efficiency of all units manufactured) meets or exceeds the applicable energy efficiency standard established in EPCA and the basic model's labeled efficiency level, and (2) in the case of the enforcement plan, that an electric motor found to be in noncompliance will actually be in noncompliance. The November 27, 1996 **Federal Register** notice (61 FR 60440), at section XIII.C.3. and 8., *Issues for Public Comment,* requested comments on these proposed sampling plans.

In response, the National Electrical Manufacturers Association (NEMA) and motor manufacturers raised issues concerning the proposed sampling plans, and NEMA submitted to the

Department alternative approaches, one for compliance testing and another for enforcement testing. NISTIR 6092 ''Analysis of Proposals for Compliance and Enforcement Testing Under the New Part 431; Title 10, Code of Federal Regulations,'' January 1998, (the NIST analysis) compared the DOE's proposed rule and the NEMA proposals through model calculations of their operating characteristics, i.e., the estimated probability of demonstrating compliance for a given true average of efficiency.

In the reopening notice, the Department stated that, although it continued to consider adoption of the NOPR's sampling plans, it was also considering adopting instead NEMA's proposed sampling plans, or variations of those sampling plans. 63 FR 34762–64 (June 25, 1998). Comments and data were requested concerning the accuracy and workability of NEMA's proposals.

(1) Sampling Plan for Compliance Testing

Section II.B.2. of the reopening notice, 63 FR 34764 (June 25, 1998), requests comments on whether DOE should adopt the NEMA proposal for compliance testing, or alternatively, adopt the NEMA proposal but substitute a coefficient of 1.03 or 1.01 for the 1.05 coefficient in the NEMA formula. Also, the reopening notice states that DOE could adopt the NEMA proposal, with or without change in the 1.05 coefficient, but with a requirement that the number of units to be tested be fixed, at five motors for example.

The American Council for an Energy Efficient Economy (ACEEE) and NEMA jointly advocate adoption of the ''NEMA proposal,'' [10] as it is referred to in the reopening notice, 63 FR 34763 (June 25, 1998), for compliance testing as well as enforcement testing. As to the sampling plan for compliance at proposed section 431.24(b)(1)(iii), 61 FR 60467 (November 27, 1996), ACEEE and NEMA contend that, given the actual variations in the performance of electric motors and the accuracy of any test procedure to measure efficiency, ''requiring the average efficiency of any sample to be not less than the represented efficiency places an unreasonable burden on manufacturers and would require that all electric motors be designed to substantially exceed the represented value [of efficiency] to assure that any sample would pass the compliance test.'' The same concerns would be raised, they contend, by reducing the 1.05 coefficient in the NEMA proposal for compliance, to a number such as 1.03 or 1.01. (ACEEE/NEMA, No. 38 at pg.3). Also, ACEEE and NEMA recommend that the Department not specify a fixed sample size, but rather specify a *minimum* sample size of five units for the compliance sampling plan. Further, a sample size of fewer than five units should be permitted when the basic model is of a rare design for which fewer than five units would be produced over a reasonable period of time. ACEEE and NEMA assert that the absolute pass or fail nature of their joint sampling plan proposal would also not cause undue burden on motor manufacturers. (ACEEE/NEMA, No. 38 at pgs. 3 and 4).

Sterling Electric, Inc., asserts that it is a small manufacturer with ''limited resources,'' and advocates a ''simple statistical procedure'' to verify that its motors comply with EPCA efficiency standards. (Sterling, No. 13).

Based on the NIST analysis, and on further review of the sampling criteria for compliance testing in the proposed rule and in the NEMA proposal, the Department believes that the NEMA proposal and the comments by ACEEE, NEMA and Sterling Electric have substantial merit. To begin with, the Department has determined that the NEMA proposal for compliance testing provides statistically meaningful sampling procedures for conducting tests for electric motors, so as to reduce the testing burden while giving sufficient assurance that the true mean energy efficiency of a basic model (i.e., the average efficiency of all units manufactured) meets the motor's represented energy efficiency level.

Furthermore, the NEMA proposal is closely aligned with existing industry approaches for rating and labeling the efficiency of electric motors. Under NEMA Standard MG1, a manufacturer determines the nominal efficiency of each design of electric motor, and each individual motor of such design must be labeled with that value and have a corresponding minimum efficiency. Manufacturers design a motor to perform at or above its labeled nominal efficiency and, generally, the nominal efficiency will closely reflect the actual average efficiency of motors of that design. Consistent with this approach, under the NEMA proposal there is a high probability that, if the entire population of a basic model of motor averages a given efficiency, tests of a sample of such motors will indicate that the basic model performs at that level. Under DOE's proposed compliance sampling plan, however, such a high probability would not exist. The NEMA compliance sampling proposal also provides that a basic model cannot be determined to meet a given nominal efficiency level if the measured efficiency of *any* of the test specimens is below a level analogous to the minimum efficiency specified for a motor in MG1. Thus, the NEMA proposal has the advantage of incorporating methods that manufacturers are familiar and comfortable with.

In addition, the efficiency requirements mandated by EPCA for electric motors consist largely of industry standards contained in NEMA MG1. Section 343(a)(5)(A) of EPCA prescribes the test procedure contained in MG1, the mandatory efficiency standards in section 342(b)(1) are taken from MG1, and the definitions of ''electric motor'' and ''nominal full load efficiency,'' in sections 340(13)(A) and (H), respectively, must be construed with reference to MG1. Thus, the Congress apparently intended that efficiency requirements for motors would adhere to industry standards where possible, see also EPCA section 343(a)(5)(B), providing further support for DOE's adoption of the NEMA sampling proposal for compliance testing.

The Department is also persuaded by the contention of NEMA and ACEEE that the compliance sampling provisions in the proposed rule could unreasonably burden motor manufacturers. These provisions could in effect require that electric motors be designed to exceed represented efficiency values, and values prescribed by section 342(b)(1) of EPCA, which DOE believes would be unwarranted. To begin with, the amount of such required ''overdesign'' could be substantial. For example, NIST states in its analysis that, if two units of a basic model are tested, for the model to have a 90 percent probability of being found in compliance with a given nominal efficiency, the average efficiency of the entire population would have to be above the next higher nominal value. Testing large numbers of units would be one way, under the DOE proposal, to increase the likelihood that the sample tests would indicate a given efficiency level, and to reduce the need for ''overdesign.'' This would not be an option, however, for the many basic models of electric motor that are produced in small quantities. Finally, DOE's understanding is that, given the nature of the ''electric motors'' covered by EPCA, the burdens created by any

[1] ''Proposal for the Method of Determining Compliance and Enforcement for Electric Motors Under the Efficiency Labeling Program of DOE 10 CFR Part 431,'' NEMA Motor and Generator Section, Friday, April 18, 1997 (Docket No. EE–RM–96–400, No. 23) (the ''NEMA proposal'').

need to ''overdesign'' their efficiency might well be far greater than for all or most other products regulated under EPCA. (For example, increasing the quantity and quality of materials in such a motor are virtually the only ways to improve its efficiency, and any changes to improve efficiency are highly likely to necessitate other changes in the product.)

For all of these reasons, in today's final rule the Department adopts the NEMA sampling proposal for compliance testing of electric motors, with a required minimum sample size of five units. A minimum sample size of five units shall be required for basic models for which more than five units would be produced over a reasonable time (approximately 180 days). Where fewer than five units of a basic model are produced over a reasonable time, then each unit shall be tested for compliance. This latter provision is designed to address a situation where a basic model is of a rare design, such as a design that is not mass produced or is built to order, and for which manufacturing and delivery schedules are uncertain.

(2) Sampling Plan for Enforcement Testing

DOE's proposed sampling plan for enforcement testing at section 431.127(c), Sampling, and appendix B of subpart G, 61 FR 60472, 60474–5 (November 27, 1996), assumes that the true mean full load efficiency and standard deviation of the motor efficiencies are not known. The proposed sampling plan establishes benchmarks for the standard error in the mean, based on the existing NEMA guidelines for identifying motor efficiency levels at NEMA MG1–12.58, and NEMA Table 12–8. Under the NEMA guidelines, no single unit can have energy losses more than 20 percent greater than the average losses for that type of motor, i.e., a 20 percent loss tolerance is permitted for a given unit but the average must still be met. Section III.G. of the preamble to the proposed rule states the Department's belief that the 20 percent loss tolerance is reasonable and meaningful. 61 FR 60459–60, 60474–75 (November 27, 1996). NEMA's sampling plan for enforcement testing is very similar to its plan for compliance testing, and provides that the same conditions must be met to establish that a motor complies with the applicable EPCA standard, except that the coefficient is based on the total variation in energy efficiency permitted by NEMA MG 1 paragraph 12.59, ''Efficiency Levels of Energy Efficient Polyphase Squirrel-cage Induction Motors.''

Section II.B.2. of the reopening notice describes the NEMA sampling plan for enforcement, 63 FR 34763 (June 25, 1998), and states that DOE could adopt the NEMA plan with or without modification of the coefficient, 63 FR 34764 (June 25, 1998). Alternatively, the reopening notice states, DOE could retain the sampling plan for enforcement in the proposed rule with the statistical confidence level increased from 90 percent to 99 percent, or some other value higher than 90 percent. Also, as further discussed below in Section E.2, DOE stated its intention in the reopening notice that the enforcement procedures in the final rule, including the enforcement sampling plan, would apply to allegations both of labeling violations as well as non-compliance with the applicable standard for efficiency. 63 FR 34765–66 (June 25, 1998).

As with sampling for compliance testing, ACEEE and NEMA jointly advocate adoption of the April 18, 1997, ''NEMA proposal'' as it pertains to enforcement sampling. (ACEEE/NEMA, No. 38 at pg. 4). ACEEE and NEMA assert that the only difference between their joint proposals for compliance and enforcement are the coefficients that represent the variation in total losses for the sample or population. They opine that the values for enforcement are greater in order to account for the added variation that results when efficiency is determined through testing at different test facilities. They also state that their enforcement sampling plan would apply to both the accuracy of the nameplate efficiency, as well as compliance with the applicable EPCA efficiency value. (ACEEE/NEMA, No. 38 at pgs. 5–6).

Based on the NIST analysis of the operating characteristics of the enforcement sampling plan proposed by NEMA, at NISTIR 6092 (January 1998), pages 4 through 7, the Department finds that the industry plan for enforcement sampling makes little distinction between energy efficiency performance at and significantly below an efficiency standard prescribed by EPCA. According to the NIST analysis of the NEMA proposal for enforcement testing, the NEMA plan may not adequately differentiate between significant levels of performance. For example, there appears to be no appreciable change in the outcome of testing between a test of a basic model for which the true mean efficiency is equal to a given nominal value and a test of a basic model for which the true efficiency is equal to the next lower NEMA nominal value. Also, the Department is not convinced that the added variation allowed under the NEMA proposal for enforcement would necessarily account for testing variations at different test facilities.

The proposed sampling plan for enforcement is designed to be different from the sampling plan for compliance. It is based on the *t*-statistic, which is used at appendix B to subpart F of 10 CFR Part 430—Sampling Plan for Enforcement Testing, and is tailored for enforcement testing of electric motors, based upon NEMA MG1–1993 paragraphs 12.58 and 12.59. According to NIST, the *t*-test is not strongly influenced by the exact form of the underlying distribution, it is a widely accepted basis for a testing protocol, and the likelihood of a correct determination increases with sample size. The Department finds that the likelihood of a correct determination increasing with sample size is consistent with the ACEEE/NEMA recommendation that a *minimum* of five units be tested, although ACEEE/NEMA opine that there should be no upper limit placed on the sample size. As a practical matter, the Department has determined that the upper limit of the sample size should be fixed at 20 units, as it is in appendix B to subpart F of 10 CFR Part 430. Based on NISTIR 6092, pages 6–7, the Department agrees with NIST that it is highly unlikely that a motor that is labeled in accordance with the NEMA MG1 energy efficiency standards would require testing beyond the initial sample of five, and that any risk of additional testing is more than offset by the increased value of the test in assuring that the manufacturer's interests are protected. Moreover, if enforcement testing is carried on up to 20 units, there would be likely indications of other fundamental problems in the manufacture and/or testing of such basic model which could be ascertained and corrected through other means, such as examination of the underlying data according to the aforementioned ''test notice'' procedure described at 10 CFR 431.127(a)(1).

The Department agrees with NIST, NISTIR 6092 at page 6, that the performance of the Sampling Plan for Enforcement Testing with the statistical confidence of 90 percent could imply that the likelihood of a false conclusion that a product is not in compliance could be as high as 10 percent, and that this level of assurance may not adequately protect the manufacturer's interests. The Department has considered various levels of statistical confidence, other than 90 percent, and has determined that the Sampling Plan for Enforcement Testing in today's final rule will be based on 97.5 percent

statistical confidence, as has been established at appendix B to subpart F of 10 CFR Part 430.

In sum, with this modification, the Department concludes that the Sampling Plan for Enforcement Testing, as set forth at proposed appendix B to subpart G of Part 431, will apply to a test of whether an electric motor's nominal full load efficiency complies with section 342(b)(1) of EPCA as well as to a test of the accuracy of the labeled efficiency of a motor.

D. Energy Efficiency Standards

Section 342(b)(1) of EPCA, 42 U.S.C. 6313(b)(1), prescribes energy efficiency standards for electric motors that are 1 through 200 horsepower. Section 431.42 of the proposed rule incorporates these efficiency standards, and for each horsepower rating to which a group of standards applies, states the equivalent kilowatt rating which those standards also apply. The NOPR proposes the following criteria for determining the standard that applies to an electric motor that has a horsepower or kilowatt rating between two horsepowers or kilowattages listed consecutively in section 342(b)(1) of EPCA and section 431.42(a) of the proposed rule: (1) a horsepower at or above the midpoint between the two consecutive horsepowers would be rounded up to the higher of the two horsepowers; (2) a horsepower below the midpoint between two consecutive horsepowers would be rounded down to the lower of the two horsepowers; or (3) a kilowatt rating would be directly converted from kilowatts to horsepower and the resulting horsepower rounded as stated above. 61 FR 60470 (November 27, 1996).

1. Non-standardized Horsepower Ratings

Washington State University Cooperative Extension Energy Program and the Washington State Department of Community, Trade and Economic Development (WSU/WSD) address DOE's concern, in the preamble to the proposed rule at section III.D.2, ''Standards for Horsepowers Not Listed in Statute, and for Non-standard Kilowatt Ratings,'' 61 FR 60450 (November 27, 1996), about efficiency levels that would be applicable to electric motors manufactured to non-standard horsepower ratings. WSU/WSD assert that the output rating of an electric motor is not the maximum horsepower the motor will produce but is a nominal output power at which nameplate and catalog performance parameters are tabulated. Most motors, they explain, can operate near nameplate efficiency at loads down to 50 percent and can sustain operation in ideal conditions at power demand 15 percent higher than their rating. They appear to recommend that a motor with a rated horsepower that exceeds a power rating specified in EPCA, by greater than one percent, should be required to meet the efficiency rating prescribed for the next higher horsepower specified in EPCA. In other words, WSU/WSD apparently advocate the one percent point for rounding up. (WSU/WSD, No. 5 at page 5, item D.).

The issue here is whether to round up or down from the mid-point between two horsepowers, as DOE proposed at section 431.42(b) in the rule, or from the 1 percent point, as WSD suggests. The WSU/WSD approach to rounding up is similar to the NEMA position described at page 60450 in the preamble to the proposed rule, where a motor with rating between two of the horsepower ratings specified by EPCA would be required to meet the efficiency standard for the next highest horsepower. For the reasons stated in the preamble, the Department continues to believe that such rounding up to the next energy efficiency level could make it very difficult for some sizes of motors to meet the statutory energy efficiency levels and could have the effect of banning or limiting their use. 61 FR 60450 (November 27, 1996). This would be true for an electric motor used as a component of a compressor, for example, where the compressor is designed around the size of the motor to allow for air flow and cooling requirements. Such space requirements and restrictions could prevent the use of a larger motor, such as an electric motor that must be physically larger to meet the next higher energy efficiency level. (Kaeser Compressors, No. 48). Also, the Department believes that rounding up or down from the mid-point is not sufficient incentive for a manufacturer to produce new intermediate horsepower ratings, such as the 12 horsepower rating contemplated by WSU/WSD. If that were to occur, however, the Department could consider amending the rule to adopt alternative rounding approaches.

2. Motor Horsepower and Standard Kilowatt Equivalent

The joint comments of WSU/WSD recommend that an electric motor rated in kilowatts be allowed to meet the energy efficiency of the nearest lower horsepower equivalent if the motor's kilowatt rating is within one percent of that lower horsepower equivalent, and not be required to meet the efficiency rating of the next higher horsepower (WSU/WSD, No. 5 at II.D.).

The Department believes that WSU/WSD may have misconstrued section 431.42 in the proposed rule. They incorrectly state that ''the Department proposes that IEC motors with ratings falling between two standard horsepower ratings should be required to meet the more stringent rating of the higher horsepower.'' (WSU/WSD, No. 5 at II.D.). First, as to an electric motor with a *standard* kilowatt rating, the Department proposed in section 431.42(a) that the required efficiency level be that prescribed for motors with the equivalent horsepower rating specified in IEC Standard 60072–1. 61 FR 60449–50, 60469 (November 27, 1996). As demonstrated by examination of these specified equivalencies and the exact conversions of standard kilowatt ratings to horsepowers—no standard kilowatt rating exactly equals a standard horsepower rating—an IEC motor with a standard kW rating must sometimes meet the efficiency standard for the next higher horsepower and sometimes for the next lower. *Id.* In all cases the standard it must meet is prescribed for a horsepower that is very close to an exact conversion from its kilowatt rating. *Id.* Second, as to motors with *non-standard* kilowatt ratings, section 431.42(b)(3) of the proposed rule provides that the kilowatt rating would be arithmetically converted to its equivalent horsepower rating, and then, based on whether the motor falls above or below the *midpoint* between consecutive horsepower ratings, would be required to meet the corresponding *higher or lower* energy efficiency level, respectively. The Department believes that such rounding from the midpoint between two non-standard kilowattages further addresses WSU/WSD's concern about requiring IEC motors to meet the next higher levels of efficiency. Therefore, the Department will make no change in this regard in today's final rule.

3. World Trade Organization (WTO) Agreements and the Trans Atlantic Business Dialogue (TABD)

Zentralverband Elektrotechnik-und Elektronikindustrie e.V. (ZVEI) advocates that the Department's standards regulations for electric motors be set up according to the principles of the WTO and the TABD, using international standards as much as possible. (ZVEI, No. 37 pg. 2).

The energy efficiency test procedures and standards for electric motors are established by sections 343(a)(5)(A) and 342(b)(1), respectively, of EPCA. To the extent possible under EPCA, the

proposed rule takes international requirements into account. Section 431.42, *Energy efficiency standards and effective dates,* of the proposed rule, for example, prescribes the EPCA energy efficiency levels in terms of both horsepower and equivalent kilowatt ratings based on IEC Standard 60072–1. Similarly, the definition of ''electric motor'' in section 431.2 of the proposed rule uses various descriptive terms in the definition which are followed by the parenthetical ''IEC'' as referenced to the IEC Standards 60034–1, 60034–12, 60050–411 and 60072–1. Also, sections 431.26 and 431.27, which pertain to Department of Energy recognition of accrediting bodies and certification programs, cite ISO/IEC Guides 25, *General requirements for the competence of calibration and testing laboratories,* 27, *Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk,* 28, *General rules for a model third-party certification system for products,* 58, *Calibration and testing laboratory accreditation systems—General requirements for operation and recognition,* and 65, *General requirements for bodies operating product certification systems.* There is no change to such provisions in today's final rule.

4. Electric Motors as Components of Systems

Section 342(b)(1) of EPCA, 42 U.S.C. 6313(b)(1), imposes efficiency standards for ''each electric motor manufactured (alone or as a component of another piece of equipment).'' Consistent with the above provision of EPCA, the proposed rule covers every ''electric motor'' that is manufactured, regardless of whether it is manufactured ''alone,'' and then inserted into another piece of equipment, or manufactured ''as a component of another piece of equipment.''

York International (York) asserts that that standards imposed by section 342(b)(1) of EPCA do not apply to motors used as components in certain commercial heating, ventilating, and air-conditioning equipment covered by the energy efficiency standards at section 342(a) of EPCA. (York, No. 6)

Section III.D.3., ''Electric Motors as Components of Systems,'' 61 FR 60451 (November 27, 1996), of the preamble to the proposed rule, addresses concerns from the Air-Conditioning & Refrigeration Institute similar to those of York. The Department finds no provision in the requirements for system efficiency at section 342(a) of EPCA that explicitly or implicitly renders the efficiency standards in section 342(b)(1) inapplicable to motors used in air conditioning or other equipment covered by section 342(a). Consequently, there is no change in today's final rule.

E. Labeling

1. Statutory Provisions

Section 344(a) of EPCA provides that, if the Department has adopted test procedures for a type of ''covered equipment,'' such as motors, it must prescribe a labeling rule for that equipment. Section 344(b) provides that such rule must require disclosure of the motor's energy efficiency, and may require disclosure of estimated operating cost and energy use, determined in accordance with the test procedures. Section 344(c) authorizes inclusion in the rule of additional requirements ''likely to assist purchasers in making purchasing decisions,'' such as requirements for display of the label, providing information as to energy consumption, and disclosing in printed matter efficiency information required to be on labels.

Section 344(d) of EPCA, 42 U.S.C. 6315(d), requires that within 12 months of establishing test procedures, ''the Secretary shall prescribe labeling rules * * * applicable to electric motors taking into consideration NEMA Standards Publication MG1–1987.'' Such rules shall require that electric motors be labeled to ''(1) indicate the energy efficiency of the motor on the permanent nameplate attached to such motor; (2) prominently display the energy efficiency of the motor in equipment catalogs and other material used to market the equipment; and (3) include such other markings as the Secretary determines necessary, solely to facilitate enforcement of the standards established for electric motors under section 342.''

All of the foregoing provisions are subject to section 344(h) of EPCA, 42 U.S.C. 6315(h), which states in essence that no labeling rule shall be promulgated for a type of covered equipment unless (1) such labeling is technologically and economically feasible with respect to such class; (2) significant energy savings will likely result from the labeling; and (3) the labeling is likely to assist customers in making purchases.

2. Provisions of Regulation

Section 431.82(a) of the proposed rule sets forth efficiency labeling requirements for the permanent nameplate of an electric motor. Proposed section 431.82(a)(1) and (2), requires the nameplate to display the motor's nominal full load efficiency and the Compliance Certification number, and states how such information is to be displayed. Proposed section 431.82(a)(3) allows the words ''energy efficient,'' or the encircled lower case letters ''ee,'' [11] or some comparable designation or logo, to be displayed at the manufacturer's option on a motor that meets the applicable efficiency standard and compliance certification requirements. Section 431.82(b) sets forth the requirements for disclosure of information in marketing materials. Section 431.82(c) proposes that certain information be disclosed on import documents. Section 431.82(d) deals with voluntary compliance with the aforementioned labeling requirements for motors that would otherwise not be covered under EPCA.

a. Use of the Words ''Energy Efficient''

Washington State asserts that ''energy efficient'' is the official NEMA term for motors that meet the requirements of paragraph MG1–12.59 and Table 12–10 in NEMA Standards Publication MG1, ''Motors and Generators.'' While that table currently is identical to section 342(b)(1) of EPCA, it encompasses more motors than the electric motors covered under EPCA. Consequently, use of the term ''energy efficient'' should be avoided. (WSU/WSD, No. 5 at II.J.). NEMA recommends that the words ''energy efficient'' not be used, even as an option, since the nominal full load efficiency values, and their associated minimum efficiency values, in MG1–1993 are subject to change and, subsequently, could become inconsistent with the EPCA efficiency levels for electric motors. (NEMA, No. 18 at 9.).

EPCA requires an electric motor to meet a specified level of nominal efficiency, and does not require an electric motor to be labeled with a minimum efficiency value. Under the NEMA convention, a motor that is labeled as ''energy efficient'' must meet both a specified nominal efficiency and a minimum efficiency associated with that nominal efficiency. In view of the comments from both Washington State and NEMA, the Department understands that confusion could arise from allowing the term ''energy

[11] See § 431.82(a)(3).

efficient'' being used to connote compliance with EPCA. Consequently, the Department withdraws its proposed use of the term ''energy efficient'' in section 431.82(a)(3) and (b)(2) of today's final rule.

b. Use of Standardized Nominal Full Load Efficiency Values

As explained in section II.A.7. above, NEMA MG1 establishes a logical series of standard nominal motor efficiencies, from which the motor nameplate efficiency marking is selected, to avoid the inference of unrealistic accuracy in manufacturing and testing that might be assumed from a potentially infinite number of labeled efficiency values. One commenter queried whether only the statutory nominal full load efficiency values would be allowed on the electric motor nameplate, or some intermediate level of actual efficiency, as determined by testing that particular motor. (Treffinger, No. 4 at 4.).

Although the efficiencies stated on the labels would be standardized values, and often would not match precisely the test procedure results for the type of motor being labeled, the intervals between standardized values are small, and differences among efficiency values within a given interval are not significant. The Department believes that such standardized values accurately represent both the energy efficiency of a given motor, and the differences in efficiency among motors. Consequently, the Department is adopting in today's final rule the proposed requirement that motors be labeled with nominal full load efficiency values which are identical to the standardized values contained in NEMA MG1–1993, Table 12–8.

c. Minimum Efficiency

In the preamble to the proposed rule, at section III.E.2., *Information on Motor Nameplate,* the Department considered the requirement to display both the nominal and applicable minimum efficiency on the nameplate of an electric motor. For the reasons given, the Department stated its belief that it could not *require* the minimum efficiency to be displayed on labels or in marketing material. See 61 FR 60452 and 53 (November 27, 1996).

Underwriters Laboratories, Inc., the joint comments of WSU/WSD, and NEMA recommend against labeling electric motors with a minimum efficiency value. WSU/WSD assert that the term ''minimum efficiency'' is confusing and has ''little basis in reality.'' They assert that, even though there is popular belief that the minimum efficiency is a ''guaranteed'' minimum, their review of actual motor efficiency from motor testing laboratories shows that many individual motors fall both below the statutory nominal efficiency and the voluntary minimum efficiency associated with a particular nominal efficiency. Washington State believes that rigorous verification of compliance with the nominal efficiency will reduce occurrences of electric motor efficiency falling below the minimum. (UL, No. 9 at page 2; WSU/WSD, No. 5 at II.G; and NEMA, Public Hearing, Tr., pg. 180).

Having given this issue further consideration, the Department now believes it may have the authority under section 344(c)(2) of EPCA to require display of minimum efficiency levels on labels or in marketing materials. Nevertheless, in light of the comments, the Department will not adopt such a requirement in today's final rule.

d. Display of Nominal Efficiency, Compliance Certification Number, ''ee'' Logo, and Date of Compliance

Section 431.82(a)(1) of the proposed rule requires that the permanent nameplate of an electric motor be marked with the motor's nominal full load efficiency and the Compliance Certification number supplied by DOE. Also, proposed section 431.82(a)(3) provides for optional display of the encircled lower case letters ''ee,'' or comparable logo, if the motor both meets the applicable standard and is covered by a Compliance Certification.

Several commenters support the use of the Compliance Certification number and the ''ee'' logo. (Treffinger, No. 4 at paragraph 6; WSU/WSD, No. 5 at II.J; UL, No. 9, at page 2; ACEEE, Public Hearing, Tr. Pg. 204; and NEMA, No. 18 at pages 9 and 10; and NEMA, Public Hearing, Tr., pg. 180). UL opines that use of the ''ee'' mark would be a simple means to identify a motor that is in compliance, but cautions that DOE would have difficulty controlling its fraudulent use. (UL, No. 9, at page 2).

The Department also received comments concerning the location of the Compliance Certification number, and the additional requirement of a date or other information on the nameplate. ACEEE supports display of a CC number, date of compliance, and ''ee'' logo on the nameplate of each complying motor, but asserts that information beyond that would not contribute to enforcement. (ACEEE, Public Hearing, Tr. pg. 204.). In testimony, NEMA asserted that the motor nameplate should contain the nominal efficiency and Compliance Certification number, and that display of a standardized DOE logo be optional. (NEMA, Public Hearing, Tr. pg. 180). In its written comments, however, NEMA asserts that the location of the Compliance Certification number should be optional to the manufacturer. (NEMA, No. 18 at page 11).

Section 431.82(a)(1)(ii) and (2) of the proposed rule requires the Compliance Certification number to be marked on the permanent nameplate of an electric motor. The Department believes that marking the Compliance Certification number on the permanent nameplate of a covered motor is necessary to help enforce the efficiency standards established for electric motors under section 342 of EPCA, since the permanent nameplate provides the most durable, common location from which to glean standardized information concerning the identity of the manufacturer of that motor, construction data, operational data, energy efficiency data, and other data. Also, the Department understands that most electric motors are often purchased, sight unseen, through catalogs and other marketing materials, and the permanent nameplate is often not a factor in motor selection. The information marked on the permanent nameplate would provide some assurance to a purchaser that it had received a motor that has been certified as complying with EPCA, and provide traceability that would assist agencies that enforce the energy efficiency standards for electric motors under EPCA.

The Department believes that the proposed rule provides for the markings necessary to facilitate enforcement, in accordance with section 344(d)(3) of EPCA, and sees little value in requiring the date of compliance on the nameplate of each complying motor, as ACEEE recommends. This view is supported by NEMA's assertion that disclosing the date of compliance on shipping documents would serve no useful purpose. (NEMA, No. 18 at page 10).

For the above reasons, the Department will not require the date of compliance to be marked on the nameplate of a complying electric motor, and the provisions proposed at section 431.82(a) for marking an electric motor with the nominal full load efficiency, the Compliance Certification number, and the encircled letters ''ee'' will remain largely unchanged in today's final rule. (Discussion below at section II.F.4. further addresses use of the Compliance Certification number on motor labels.)

e. Labeling of Motors Not Covered by EPCA

Section 431.82(d), ''Other motors,'' of the proposed rule permits a ''non-

covered'' motor, including a motor manufactured prior to the effective date of EPCA for electric motors, to be labeled with the information required or permitted for electric motors, and provides that the ''non-covered'' motor will then become subject to the requirements of 10 CFR Part 431 concerning standards, testing, certification and enforcement.

Mr. W. Treffinger supports retroactive use of the encircled ''ee'' marking for units currently in stock.[12] (Treffinger, No. 4 at paragraph 6.). Both NEMA and ACEEE support use of the encircled ''ee'' logo for motors that meet EPCA efficiency standards, even if such motors are manufactured before the effective date of the standards, or are definite or special purpose motors. (NEMA, Public Meeting, June 2, 1995, Tr. pgs. 195–6; NEMA, No. 9 at pg. 13 and appendix C, pgs. 11–12; NEMA, No. 9 at C.; NEMA, No. 38 at pg. 15; and ACEEE, Public Meeting, June 2, 1995, Tr. pg. 201.) Washington State asserts that any ''non-covered'' motor model, having an enclosure and speed equivalent to a covered motor, which bears the ''ee'' mark should be subject to the same testing requirements as covered motors. (WSU/WSD, No. 5 at II.J.). NEMA expresses concern, however, that under proposed section 431.82(d), any motor for which nominal efficiency is marked on the nameplate would be classified as an ''electric motor,'' and that many types of non-covered motors are marked with the applicable nominal efficiency value. NEMA asserts that classifying a non-covered motor as an ''electric motor,'' however, should be at the option of the manufacturer, and should only occur when the manufacturer uses the Compliance Certification number and ''ee'' logo. (NEMA, No. 18 at pg. 10, and No. 38 at pg. 15).

In section III.E.4., ''Other Matters,'' in the preamble to the proposed rule, 61 FR 60454 (November 27, 1996), the Department states that there is merit in the proposal to permit manufacturers to use the encircled ''ee'' logo for motors that meet EPCA efficiency standards, even if such motors are manufactured before the effective date, or are definite or special purpose motors. However, after further review, the Department has decided to exclude proposed section 431.82(d) from the final rule. First, monitoring whether ''non-covered'' motors meet requirements imposed by and under EPCA could impose considerable burdens on DOE. The Department would have to process any Compliance Certifications submitted for such motors, and address any complaints of mislabeling and of non-compliance with efficiency standards and test procedures. This could detract from the Department's activities as to motors and other products that are clearly covered by EPCA. The Department does not believe that such use of its resources, even if legally permitted, is justified at this time. Second, the Department believes it would be problematic, under the statutory provisions for enforcement at sections 332, 333, and 345 of EPCA as to whether DOE could take enforcement action and impose sanctions as to a motor that is not covered under EPCA. Consequently, today's final rule will not include the provisions proposed at section 431.82(d) for motors that are not covered under EPCA, thereby rendering moot the aforementioned comments.

Notwithstanding today's final rule, the Department understands that the Federal Trade Commission would have jurisdiction, under section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), for example, to address efficiency mislabeling of motors not covered by EPCA. The Department also understands that motors not covered under the statutory definition of ''electric motor'' are typically tested for energy efficiency, in the same manner as covered electric motors, under IEEE Standard 112–1996 Test Method B or CSA Standard C390–93 Test Method (1), and such motors that are not covered could be generically represented as ''energy efficient'' according to the voluntary labeling provisions in NEMA MG1–1993, apart from the provisions of EPCA.

f. Enforcement Testing Where Violation of a Labeling Representation is Alleged

The proposed rule could be interpreted as providing that the enforcement procedures, set forth in section 431.27 of the proposed rule, would be used only to address allegations of non-compliance with the applicable regulatory standard for efficiency. In the reopening notice, at Section II.D., *Enforcement Testing Where Violation of a Labeling Representation Is Alleged,* 63 FR 34765–66 (June 25, 1998), DOE stated its intention to make clear in the final rule that the enforcement procedures would also apply in determining whether the labeled efficiency rating for a motor is erroneous, and the reopening notice sought comments on this issue.

The ACEEE and NEMA support use of the enforcement procedures for determining both the accuracy of the nameplate efficiency, as well as compliance with the applicable EPCA efficiency value. (NEMA/ACEEE, No. 38 at D.) There were no comments to the contrary. The final rule provides that these procedures, including the proposed sampling plan at section 431.127(c), will be used to determine the validity of labeling representations for an electric motor, and not just whether the motor meets or exceeds the regulatory standard for efficiency. The Department has made necessary modifications in the language of section 431.127(a)(1) and appendix B to subpart G, and has modified section 431.127(c), Sampling, to read, ''The determination that a manufacturer's basic model complies with the applicable energy efficiency standard, or with its labeled efficiency, must be based on testing conducted in accordance with the statistical sampling procedures set forth in appendix B of this subpart and the test procedures set forth in Appendix A to subpart B of this part.''

g. Imported Motors

Section 431.82(c) of the proposed rule would require any electric motor imported into the United States to be accompanied by shipping papers that disclose clearly the date of the Compliance Certification for that motor, and the applicable Compliance Certification number.

NEMA asserts that shipping documents should show the Compliance Certification number(s) for the electric motor(s) covered under EPCA, for example, ''EPACT CC No. XXX IMPORTED FOR SALE IN USA.'' NEMA objects to disclosing the date of the Compliance Certification and energy efficiency of the motor or motors on import documents. NEMA also asserts that shipping documents should list motors that are not covered by EPCA with the reason they are not covered, for example, ''DEF. PURPOSE MOTOR EXEMPT FROM EPACT IMPORTED FOR SALE IN USA.'' (NEMA, No. 18 at pages 9 and 10, and exhibits B, C, and D).

Proposed section 431.82(c), was intended to aid the U.S. Customs Service in preventing entry into the United States of motors that do not comply with EPCA. In discussions with the Department, however, the Customs Service has raised questions as to whether the provisions of proposed section 431.82(c) would help them. Consequently, the Department had decided to delay final action on this section until it has had further consultations with Customs. The Department intends to include in those

[12] The Department infers that ''units currently in stock'' refers to motors manufactured prior to the effective date of EPCA, and that would be covered equipment if they had been manufactured after such effective date.

discussions the subject of requirements for imported motors not covered by EPCA. Therefore, today's final rule includes no provisions concerning import documents.

h. Weights of Conductors and Magnetic Materials

One commenter proposed that the motor nameplate list the weight of the copper or aluminum conductors used in the motor, and the weight of the magnetic iron used in the construction of the motor. (Angelo Ruggiero, No. 17.).

The Department understands that a relationship exists between the efficiency of an electric motor and the quantity and quality of active materials, such as copper and magnetic steel, used in the motor. In the Department's view, marking the measured weight of copper, aluminum, or magnetic steel content for a particular basic model electric motor might provide some indication of motor efficiency, but it would be of limited value because it is only one of several variables affecting efficiency that could also be marked on the nameplate of a motor. On the other hand, marking of all of these values on the nameplate would be very burdensome and might not be technically feasible. Therefore, the Department does not believe that it should require such markings under section 344 of EPCA and the final rule contains no such requirement.

F. Certification of Compliance

EPCA directs the Department to require manufacturers to certify that each motor meets the applicable EPCA efficiency standard. EPCA section 345(c). 42 U.S.C. 6316(c). Section 431.123 of the proposed rule establishes the requirements for manufacturers to certify compliance, including a reference to Appendix A of subpart G, which sets forth the format for a Compliance Certification. 61 FR 60371, 60473–60474 (November 27, 1996).

The first sentence of proposed Section 431.123(a) states that no electric motor ''subject to an energy efficiency standard set forth in subpart C of this part'' may be distributed unless it is covered by a Compliance Certification. Thus, because proposed section 431.42 in subpart C provides that only electric motors manufactured after October 24, 1997 (or October 24, 1999 for certain motors) are subject to standards, the proposed rule as written would require a Compliance Certification to be submitted only for an electric motor manufactured after whichever of the two dates applies to that motor. 61 FR 60469–70 (November 27, 1996). For the same reason, proposed section 431.123(a) would not bar the distribution of a non-complying motor manufactured before the applicable date. Consequently, the Department has not added to proposed section 431.123(a) the language ''manufactured after October 24, 1997'' to qualify the term ''electric motor,'' as suggested by NEMA (NEMA, No. 18, p. 12), because to do so would create a redundancy.

The following addresses issues concerning the content and format of the Compliance Certification, and concerning issuance and use of Compliance Certification numbers.

1. Reference to Certification Programs

The Compliance Certification form in Appendix A of subpart G in the proposed rule includes tables for reporting the efficiencies of electric motors. A ''Note'' to the tables, 61 FR 60474 (November 27, 1996), directs manufacturers to ''place an asterisk beside each reported nominal full load efficiency that is determined by actual testing rather than by application of an alternative efficiency determination method.'' Reliance Electric encourages the Department to modify the Compliance Certification in appendix A of subpart G to also include identification of motors for which a certification organization was used. (Reliance, No. 11, pp. 6–7; Reliance No. 47).

Whether a manufacturer uses its own accredited laboratory, a third party accredited laboratory or a certification program, the manufacturer bears ultimate responsibility for certifying compliance under 431.123 of the rule. The Department believes that there is no need to specify that a certification program is contributing to the determination, since the manufacturer is listed on the Compliance Certification. Consequently, in today's final rule the Department will not require the Compliance Certification to identify motors for which a certification organization was used.

2. Nominal Versus Average Full Load Efficiency

Each efficiency standard prescribed by EPCA for an electric motor is a specified minimum ''nominal full load efficiency.'' EPCA section 342(b)(1), 42 U.S.C. 6313(b)(1). The preamble to the proposed rule, in section III.E.2., ''Information on Motor Nameplate,'' discusses nominal full load efficiency as the efficiency that industry currently marks on the motor nameplate, and that the Department will require be on the nameplate. ''Nominal full load efficiency'' is defined in the rule at section 431.2 as being derived from the ''average full load efficiency'' of a population of motors of the same design. Pursuant to sections 431.2 and 431.24 of the proposed and final rules, ''average full load efficiency'' refers to the average of the individual efficiencies of such a population of motors, determined through testing or use of an AEDM. Section 431.123(b)(2)(i) of the proposed rule requires that the Compliance Certification report the average full load efficiency of an electric motor, as is designated on the sample Compliance Certification in appendix A to subpart G of part 431.

Reliance Electric encourages the Department to modify this requirement, so that the efficiency value to be reported is the declared ''nominal full load efficiency'' and not the ''average full load efficiency.'' Reliance states this would be consistent with both the instructions in the Note on the Compliance Certification, and the efficiency which is marked on the motor, rather ''than a value of efficiency not found in any publication, database, or on the motor itself.'' (Reliance, No. 11 at pg. 7)

The Department recognizes that ''nominal full load efficiency'' is used in EPCA, and has been in use by industry, to represent the energy efficiency of a motor. Moreover, as indicated in Section II.A.7. above, the definition of ''nominal full load efficiency'' in today's final rule is based on the Department's acceptance of the view that the measured average full load efficiency of a motor could sometimes overstate the motor's efficiency, and could contain fractional values that would suggest an unrealistic degree of precision in determining efficiency. The Department also believes at this point that its receipt of average full load efficiency figures in Compliance Certifications would not significantly aid in achieving compliance with EPCA. For all of these reasons, today's final rule requires nominal full load efficiency to be reported under section 431.123(b)(2)(i), and on the sample Compliance Certification in appendix A to subpart G of the final rule.

3. Other Information To Be Reported

As indicated above, the proposed Appendix A to Subpart G provides for reporting the efficiencies of electric motors. Specifically, pursuant to proposed section 431.123(b)(2)(i), Appendix A's ''Attachment to Compliance Certification'' (''Attachment'') contains two tables (one for motors rated in horsepower and the other for motors rated in kilowatts) for reporting the efficiency of the least efficient basic model within each category for which EPCA prescribes a

minimum efficiency. The purpose of these tables is to enable a manufacturer or private labeler support its certification of compliance, by reporting motor efficiencies which show that the least efficient basic model in each category is at or above the EPCA standard for that category.

As also described above, the Note to the Attachment directs that an asterisk identify each reported efficiency that is determined through testing rather than use of an AEDM. The Note also directs listing of other basic models that have been tested, and the Attachment contains a table for providing such a list. 61 FR 60474. These provisions were intended to implement section 431.123(b)(2)(ii), which requires that the Compliance Certification identify all basic models that have been tested pursuant to section 431.24. (Such testing occurs either (1) to determine a basic model's efficiency for purposes of certifying its compliance to DOE and of labeling or (2) to substantiate an AEDM.) Identification of these basic models would indicate whether five or more basic models were tested, as is generally required by section 431.24. The Attachment is not intended to require a manufacturer to report to DOE efficiency tests it performs for other purposes, such as quality control.

Reliance suggests certain changes in the tables of the Attachment. (Reliance No. 47) First, it recommends that the two tables for reporting motor efficiencies be combined into one, with the title of the first column to be ''Motor horsepower/kilowatts.'' The Department believes that combining the two tables would simplify the format of the attachment, reduce in some instances the amount of information that would have to be reported, and still provide the necessary information for certifying compliance. Consequently, the Attachment in the final rule combines these two tables as recommended by Reliance. Second, in the table for listing other basic models that have been tested, the heading of the fourth column refers to the ''least efficient basic model.'' Reliance points out that this seems to call for reporting on the same basic models that would be included in the aforementioned table for reporting efficiencies, and would not provide for identification of more efficient basic models that had been tested to substantiate an AEDM. On this point as well, the Department agrees with Reliance's comments. The Department erroneously included the term ''least efficient'' in this table, and its retention would prevent the table from serving its intended purpose of assuring that the Compliance Certification identifies all testing undertaken to comply with the DOE regulation. Accordingly, the term is deleted from the heading of the fourth column. Finally, in today's final rule the Department has changed the title of this table to ''Models Actually Tested and Not Previously Identified'', as suggested by Reliance. Reliance points out that the title in the proposed rule, ''Additional Motors Actually Tested'', erroneously assumes that the table for reporting motor efficiencies will identify at least one basic model that has been tested.

4. Compliance Certification Number

Section 431.123(e), *Response to Certification; Certification Number for Electric Motor*, in the proposed rule, requires DOE to provide an identification number to each manufacturer or private labeler to signify compliance with section 431.123, *Compliance Certification*. Section 431.82(a)(1)(ii), *Electric motor nameplate*, in turn, requires the manufacturer to display the Compliance Certification number (''CC number'') on the permanent nameplate of the electric motor. (As written, the proposed rule does not allow for a ''private labeler's'' Compliance Certification number to be marked on the nameplate.) The Department believes that such a number is necessary to help enforce the efficiency standards, under section 344(d) of EPCA, because it would provide traceability directly to the manufacturer or private labeler, and would discourage distribution of non-complying motors.

NEMA and ACEEE recommend that one number be assigned to each manufacturer, unless the manufacturer requests additional numbers. (NEMA, No. 18 at page 11; and NEMA/ACEEE, No. 38 at pages 16 and 17). Also, NEMA recommends that each manufacturer marketing an electric motor under its own name receive its own CC number, and that a private labeler should have the option to receive its own number, or arrange to use a manufacturer's number. (Public Hearing, Tr., pg. 180).

Leeson Electric asserts that a CC number on the nameplate should identify the party responsible for the energy efficiency of that motor. Leeson conjectures, for example, that it could design and test a motor for efficiency, and through contractual arrangements have another manufacturer produce that motor complete with a Leeson nameplate and traceable to Leeson. Alternatively and with proper arrangements, Leeson conjectures that it could manufacture a motor using someone else's design and number. In either case, the CC number should identify a party responsible for the motor's efficiency. (Leeson, Public Hearing, Tr., pgs. 191–92). GE Motors recommends that the name on the nameplate be consistent with the Compliance Certification number. (GE, Public Hearing, Tr. pg. 192–93).

The Department understands that a motor manufacturer could manufacture a motor for sale (1) under its own name, (2) by another motor manufacturer, (3) by a private labeler, or (4) by any combination of these three means. For reasons of contractual obligation or product differentiation, a motor manufacturer might not want to indicate on a motor nameplate or in marketing materials that, for example, its Motor A and competitor's Motor A are both made by the competitor. Similarly, a company owning a private label might not want to disclose the identity of the motor manufacturer on its motor nameplate or in marketing materials for economic or marketing reasons, such as using a variety of manufacturers to supply the same type motor, or maintaining the focus of recognition on its private label to the exclusion of identifying the source of the motor. On the other hand, because of contractual or other considerations, a private labeler or a manufacturer selling a motor made by another manufacturer, might wish to include on the motor's nameplate the CC number of the firm that manufactured the motor.

The Department is persuaded that the final rule should allow a private labeler, or a manufacturer distributing a motor it did not manufacture, to mark a motor with its own CC number or the number of the motor's manufacturer. Use of the CC number is intended to discourage distribution of non-complying motors, to provide a marking to identify a motor that has been certified to be in compliance with 10 CFR Part 431 and to identify the source of the Compliance Certification, not necessarily to identify the manufacturer to the consumer.

The proposed rule would already permit (1) a private labeler to mark a motor's nameplate with the manufacturer's CC number, and (2) a manufacturer distributing a motor it had not manufactured to use either its own CC number or the number of the manufacturer. The final rule provides likewise. In light of the foregoing discussion, however, proposed section 431.82(a)(1)(ii) is revised in the final rule to permit a private labeler to use its own CC number. DOE does not believe that any purpose would be served by requiring the CC number on a motor to be the number provided to the party named on the motor nameplate, as apparently recommended by GE Motors.

As to the issuance of more than one CC number to a manufacturer (or private labeler), in the Department's view this would be warranted only in limited circumstances. Although the commenters that made this proposal gave no reasons for it, it appears that a manufacturer or private labeler that distributes motors under different brand names, trademarks or labels, might wish to obtain more than one number to preserve the separate identities of these motors. The Department believes that, in such a situation, a manufacturer or private labeler should be permitted to obtain a CC number that would apply to motors it distributes under a name that does not overlap with other names under which it sells motors. Issuance of more than one CC number under other circumstances, however, would be unnecessarily burdensome to the Department, and could conflict with the use of the CC number as a means of discouraging distribution of non-complying motors and readily identifying the source of the Compliance Certification. Thus, for example, if Company XYZ, a motor manufacturer or private labeler, sells electric motors under the ''XYZ'' brand name or label, and also under the ''ABC'' brand name or label, it should be permitted to obtain one CC number for each of these labels or brand names. But it should not be permitted, for example, to obtain one CC number for motors sold under the ''XYZ Premium'' or ''XYZ'' label, and another for motors sold under the ''XYZ Standard'' or ''XYZ/ABC'' label. Accordingly, section 431.123(c) and provisions in section 431.123(f) have been added to the final rule to allow a manufacturer or private labeler to request and obtain a separate CC number for any unique name under which it distributes electric motors.

Underwriters Laboratories contends that a database of information related to the Compliance Certification number will be needed for use by enforcement agencies, such as the U.S. Customs Service. Otherwise, motors could be labeled as being in compliance even though they have not been certified under section 431.123 and appendix A to subpart G. (UL, No. 9 at page 2.). The Department is likewise concerned about keeping records of Compliance Certification that would facilitate enforcement. As with compliance statements and certification reports filed with the Department of Energy under 10 CFR 430.62, *Submission of data*, for residential appliances, the Department intends to maintain such files for electric motors. These will be available to the U.S. Customs Service and any other enforcement agencies.

G. Other Matters

1. Standards Incorporated by Reference

Section 340(13)(A) of EPCA, which defines the term ''electric motor,'' states that the terms in that definition shall be used ''as defined in NEMA Standards Publication MG1–1987.'' Under section 340(13)(H) of EPCA, ''nominal full load efficiency'' is an average efficiency ''as determined in accordance with'' NEMA MG1–1987. Section 343(a)(5) of the Act requires that testing procedures for motor efficiency shall be the test procedures specified in NEMA Standards Publication MG1–1987, unless those are amended.

First, consistent with the EPCA directive that the definition of ''electric motor'' be based on NEMA MG1, section 431.2 of the proposed rule states, for the most part, that the terms used to define ''electric motor'' shall be construed with reference to provisions in the NEMA Standards Publication MG1–1987. 61 FR 60466 (November 27, 1996). In addition, section 431.2 of the proposed rule defines the term ''general purpose''—one element in the EPCA definition of ''electric motor''—by reference to the service conditions specified in NEMA MG1 paragraph 14.02, ''Usual Service Conditions.''

Second, consistent with section 340(13)(H) of EPCA, the proposed rule defines ''nominal full load efficiency'' with reference to Table 12–8 of NEMA MG1–1993.

Third, consistent with the EPCA directive that the test procedures be those specified in NEMA MG1, section 431.22(a)(2)(i) of the proposed rule, *Reference sources*, incorporates by reference NEMA MG1 with Revision 1, paragraph 12.58.1, ''Determination of Motor Efficiency Losses'', and Table 12–8, ''Efficiency Levels.'' 61 FR 60466 (November 27, 1996).

Among the comments received concerning the proposed rule were requests from NEMA and ACEEE that the Department make reference to the complete NEMA MG1, including updates through Revision 4 (June 1997), since they provide the details necessary to understand other requirements of the definition of electric motor, such as Design A and B characteristics. (NEMA, No. 18 at pg. 5; and NEMA/ACEEE, No. 38 at pg. 14.)

The Department believes it is inappropriate and impractical to incorporate into the final rule the entirety of NEMA MG1. Many parts of MG1 concern motors that are not covered by EPCA. Other parts of MG1, although relevant to motors that are covered, are irrelevant to issues of motor efficiency, or do not concern any of the matters, discussed above, on which EPCA directs that MG1 be followed. Rather they concern subjects such as aspects of the construction and performance of motors that do not bear upon the definition of ''electric motor,'' the test procedures for measuring efficiency, or determination of nominal efficiency. Thus, to incorporate all of MG1 into the final rule would result in the rule's containing a considerable amount of material that is irrelevant to compliance with EPCA. Moreover, MG1 is a sizable volume. If it were incorporated into the final rule, a substantial amount of material would become part of the rule, and the Department would have to have complete copies of this material available for inspection both at the Federal Register and the Department. For all of these reasons, the final rule does not incorporate by reference the entirety of MG1.

The final rule, however, particularly in the definition of ''electric motor,'' refers to MG1 more extensively and with greater specificity than does the proposed rule. Moreover, the final rule incorporates by reference all of the MG1 provisions referred to in the rule. As indicated above, the proposed rule states only that terms in the ''electric motor'' definition that are not defined in the rule or with reference to IEC standards, ''shall be construed with reference to * * * MG1–1987.'' 61 FR 60466 (November 27, 1996). The final rule specifically identifies each such term that is defined in MG1, cites the provision or provisions of MG1 containing the definition, and states that the term must be construed with reference to the cited provision or provisions.

All of these references are to provisions of MG1–1993 with Revisions 1–4. Several of the referenced provisions (e.g., paragraphs 1.16.1, 4.01 and 12.40.1) contain differences in numbering, language, or format, but not substance, from the corresponding provisions of MG1–1987. Referencing these MG1–1993 paragraphs in the final rule raises no issue as to the rule's conformity with EPCA's requirement that terms in the definition of electric motor be used ''as defined in MG1–1987.'' The final rule's references to paragraphs 11.31, 11.34 and 11.36 of MG1–1993, however, to construe the term ''NEMA T-frame dimensions,'' specifically exclude the dimension values in those paragraphs for motors with frame sizes 447 and 449. These values were not included in MG1–1987

and these motors were not considered to be NEMA T-frame motors under MG1–1987.

In an additional departure from MG1–1987, paragraph 11.31 of MG1–1993 does not contain values for the ''Bmax'' dimension—the maximum sizes for the ''B'' dimension. Consequently, MG1–1993 appears to define ''T-frame'' more broadly than it was defined in MG–1987, and to increase the number of motors that meet the T-frame classification. The Department understands, however, that even while operating under MG1–1987, the industry widely ignored the Bmax dimension, considered motors with B dimensions in excess of Bmax to be T-frame, and did not view Bmax as critical in defining what constituted a T-frame motor. Thus, MG1–1987 as applied excluded the Bmax dimension, and when the ''electric motor'' definition was added to EPCA, in 1992, ''T-frame, * * * motor * * * as defined in MG1–1987'' meant a motor with T-frame dimensions without regard to Bmax. For these reasons, the final rule references and incorporates paragraph 11.31 of MG1–1993 without altering its exclusion of the Bmax dimension.

Finally, the final rule retains the proposed rule's references to MG1–1993 in the definitions of ''general purpose'' and ''nominal full load efficiency'', and adds references to MG1–1993's description of ''unusual service conditions'' in the definitions of ''definition purpose motor'' and ''general purpose.'' With respect to the test procedure, the final rule also retains the proposed rule's references to MG1–1993 but adds references to Revisions 1–4.

2. Enforcement: Determining What Constitutes a ''Separate Violation''

Sections 332, 333(a) and 345(a) of EPCA, 42 U.S.C. 6302, 6303(a) and 6316(a) set forth actions that violate EPCA requirements for electric motors, and the penalties associated with each violation. Section 431.122, *Prohibited acts,* in the proposed rule incorporates and implements these provisions. It provides in paragraph (b) that, *for each motor* a manufacturer distributes that does not comply with applicable efficiency standard, a separate violation occurs. NEMA questions whether the Department intends ''that the *total penalty* for distribution of a non-compliant motor be limited to $100,'' and recommends that distribution of a motor that does not comply with the applicable efficiency standard be a separate violation for *each day* of noncompliance. (NEMA, No. 18 at pgs. 10–11; emphasis added.)

The Department believes that NEMA has misconstrued the proposed rule. Proposed section 431.122(b) provides, and DOE intends, that distribution of ''each unit'' of an electric motor that fails to comply with the applicable EPCA efficiency standard would be a separate violation. Thus, for example, if a manufacturer were to distribute 1,000 motors that do not meet the applicable standard, that would constitute 1,000 violations, and the total penalty would be $100,000 ($100 times 1,000).

In this and other respects, proposed section 431.122 closely adheres to the EPCA provisions that delineate violations of efficiency requirements, and penalties for such violations. In particular, sections 332(a), 333(a), and 345(a) of EPCA provide that a separate violation occurs, (1) for ''each violation'' of the prohibition against distributing any new covered equipment that does not conform to an applicable EPCA standard, and (2) for ''each day'' a manufacturer fails to provide required information, or comply with certain requirements of section 326 of EPCA. Those sections do not provide that each day of noncompliance with an applicable standard is a violation, as NEMA recommends. It is questionable, therefore, whether the Department could adopt such a provision in today's regulations. Nor is such a provision in 10 CFR section 430.61, which implements these same sections of EPCA for consumer products. The Department sees no basis at this time for taking a different approach in Part 431.

Accordingly, today's rule does not incorporate NEMA's suggestion that each day of noncompliance with an applicable standard would be a separate violation.

3. Technical Corrections

Today's final rule makes a number of changes to the proposed rule that do not alter the substance or intended effect of the rule. These changes, for example, expand or correct references, conform language in the rule to statutory language, or clarify the language of the rule. They are as follows:

a. References to International Standards

The definition of ''electric motor'' at section 431.2 of the proposed rule states that four terms in the definition shall be construed with reference to IEC Standard 34–1. 61 FR 60465–66 (November 27, 1996). The Department has determined that three of these terms—''cage,'' ''IEC metric equivalents [to T-frame dimensions]'' and ''Design N''—must instead be construed with reference to certain provisions in three IEC standards other than Standard 34–1. (The fourth term is construed with reference to certain provisions of Standard 34–1.) The final rule revises the definition of ''electric motor'' to reference the current versions of these provisions. In addition, because they must be used to construe the terms used in the definition, section 431.22 of the final rule incorporates these provisions by reference. The Department has also added a definitions of ''ISO''—''International Organization for Standardization''—to section 431.2 of the final rule, because of the many references to ISO in the rule.

b. Use of Term ''Energy Conservation Standard''

Part C of EPCA, which governs this final rule, uses the term ''energy conservation standard'' to refer to a level of energy efficiency required under Part C. See EPCA section 340, 42 U.S.C. 6311. In the final rule, therefore, that term is used in place of the term ''energy efficiency standard'', as for example in sections 431.41 and 431.42.

c. Preemption of State Regulations

Section 431.43 of today's final rule concerns preemption of state energy efficiency requirements for electric motors. It contains, with minor technical modifications, the language of 10 CFR section 430.33, which concerns preemption of state efficiency requirements for products covered by Part 430. Similarly, section 431.83 of today's final rule concerns preemption of state efficiency labeling requirements for electric motors. It contains, with minor technical modifications, the language of 16 CFR section 305.17, a Federal Trade Commission regulation that concerns preemption of state labeling requirements for products covered by Part 430. Neither section 431.33 nor section 431.83 was in the proposed rule, but each merely incorporates pre-emption requirements specified by sections 327 and 345 of EPCA and neither changes the substance, force or effect of the provisions of the proposed rule.

d. Provisions Incorporated from Part 430

Sections 431.28, 431.61, 431.125, 431.126, 431.128, 431.129, 431.130, 431.131, and 431.132 of the proposed rule incorporate sections of 10 CFR Part 430. These proposed sections do not repeat the language of the Part 430 provisions, but merely specify the changes that must be made in that language when it is used in Part 431. NEMA requests that the language of these sections be printed in full in Part 431, so that Part 431 will be self-contained, and its users will not have to

consult Part 430 to find pertinent requirements. (NEMA, No. 18 at pg. 13). Today's final rule accepts NEMA's suggestion, and contains the language of each of these sections in full. This results in no substantive change from the proposed rule.

e. Amount of Penalty

Section 345(a) of EPCA, 42 U.S.C. 6316(a), applies the civil monetary penalty provisions of Section 333(a) of EPCA, 42 U.S.C. 6303(a), to electric motors. Section 333(a) provides for a maximum civil penalty of $100 for each violation of an EPCA requirement. As proposed, section 431.122(b) incorporated the provisions of section 333(a), including the $100 penalty. Subsequent to issuance of the proposed rule, the Department adjusted civil monetary penalties under its jurisdiction, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134). 62 FR 46181 (September 2, 1997). The Department increased to $110 the penalty amount specified by section 333(a). This increase was reflected in an amendment to 10 CFR section 430.61. 62 FR 46181, 46183 (September 2, 1997). Accordingly, DOE has adjusted the penalty amount in section 431.122(b) of the final rule to incorporate the $110 penalty, to reflect the increase in all civil penalties set by EPCA.

f. Prohibited Acts—Section 431.122

Proposed section 431.122(a)(4) provides that it would be a prohibited act under EPCA to advertise in a catalog from which an electric motor can be purchased without including in the catalog the information ''required by section 431.82(b)(2).'' This section reference is erroneous. It is section 431.82(b)(1), rather than Section 431.82(b)(2), that requires inclusion of certain information in catalogs. Therefore, in the final rule, the section cited in section 431.122(a)(4) is corrected to 431.82(b)(1).

The final rule also adds to paragraph (c) of section 431.122 the definition of ''knowingly'' that is contained in section 333(b) of EPCA.

g. Language Changes in Sections 431.23 and 431.124(a)

As proposed, section 431.23 could give the impression that the test procedures prescribed in the regulation are mandatory only for determining whether a motor satisfies the applicable energy conservation standard. However, as demonstrated by EPCA provisions such as sections 343(d)(1) and 344(b), 42 U.S.C. 6214((d)(1) and 6215(b), and as recognized in other provisions of the final rule such as sections 431.24 and 431.82(a), the test procedures in the final rule must be used to measure an electric motor's efficiency for all purposes under EPCA. Section 431.23 of the final rule has been revised to make this clear.

Language has been added to section 431.124, *Maintenance of records,* to make clear that a manufacturer must keep records of any written certification it receives from a certification organization and relies upon under the Part 431. The manufacturer's record-keeping obligation is not be limited to certifications that attest to a motor's compliance with the applicable standard, as suggested by the proposed rule. A manufacturer also must keep, for example, certifications in which a certification organization attests to the numerical efficiency ratings of particular motors. This is consistent with the understanding of the Department and the industry that certification organizations do not merely certify a motor's compliance with a standard, but also certify its level of performance. 61 FR 60457 (November 27, 1996), section II.C.1–3 above, Reliance No. 11 at p. 7, NEMA No. 38 at p. 5.

III. Procedural Issues and Regulatory Review

A. Review Under the National Environmental Policy Act

This rule was reviewed for environmental impacts and the Department concluded that neither an environmental assessment nor an environmental impact statement is required. 61 FR at 60460. There were no comments on this issue. Therefore, the Department will take no further action in today's final rule with respect to the National Environmental Policy Act.

B. Review Under Executive Order 12866, ''Regulatory Planning and Review''

This regulatory action was reviewed pursuant to Executive Order 12866, ''Regulatory Planning and Review,'' October 4, 1993. The Department concluded that this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs. There were no comments concerning Executive Order 12866. Therefore, the Department will take no further action in today's final rule with respect to Executive Order 12866.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, which requires the preparation of an initial regulatory flexibility analysis for every rule which by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. The Department included an analysis of small entity impact in the NOPR, 61 FR 60460–61 (November 27, 1996). In summary, DOE estimates there are approximately 27 domestic firms and 14 foreign firms that manufacture electric motors covered under EPCA. Of these firms, DOE estimates there are four to six electric motor manufacturers that are small businesses under the size standards published by the Small Business Administration. The NOPR analysis examined the anticipated economic impact of the proposed rule on small manufacturers, taking into account current industry practices and steps taken in the design of the rule to keep the testing burden on manufacturers as low as possible. DOE concluded that the cost of complying with the rule (excluding the cost of compliance with the energy efficiency standards and test procedures directly imposed by EPCA) would not impose significant economic costs on a significant number of small manufacturers.

Only Sterling Electric, Inc. submitted comments concerning the possible effect of the proposed rule, and in particular its provisions pertinent to sampling plans and compliance certification, on small business. (Sterling, No. 13). Sterling Electric requested that the Department ''keep the small manufacturer in mind'' as the final rule is written and recommended (1) ''more than one choice selecting an agency to either certify and/or accredit labs,'' and (2) ''a simple statistical procedure'' to verify that its electric motors are in compliance with EPCA efficiency levels.

The Sterling comments are addressed at sections II.C.2. ''Issues involving both use of accredited laboratories and use of certification organizations,'' and II.C.4.c.(1), ''Sampling Plan for Compliance Testing,'' in the preamble to today's final rule. In sum, today's final rule at section 431.25(a) allows a manufacturer to certify compliance through its election of either an

independent testing or a certification program, and adopts the NEMA sampling plan for determining compliance, which the Department believes is a sample statistical procedure that is consistent with industry practice. Furthermore, and as pointed out in the Department's regulatory flexibility analysis, 61 FR 60461 (November 27, 1996), the compliance certification requirement would not become effective until 24 months after the effective date of the final rule. As per its analysis in the NOPR, and in view of the Department's response to the aforementioned comments from Sterling Electric, the Department certifies that today's final rule will not impose significant economic costs on a substantial number of small manufacturers.

D. Review Under Executive Order 12612, ''Federalism''

This rule was reviewed pursuant to Executive Order 12612, ''Federalism,'' 52 FR 41685 (October 30, 1987), which requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effect on States, on the relationship between the National Government and States, or in the distribution of power and responsibilities among various levels of government.

The Department set forth its analysis in the NOPR, 61 FR 60461–62 (November 27, 1996), and concluded that the proposed rule would not alter the distribution of authority, nor would it regulate the States. There were no comments concerning Executive Order 12612. Therefore, the Department will take no further action in today's final rule with respect to Executive Order 12612.

E. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''

The Department determined, 61 FR 60462 (November 27, 1996), pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 52 FR 8859 (March 18, 1988), that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

There were no comments concerning Executive Order 12630. Therefore, the Department will take no further action in today's final rule with respect to Executive Order 12630.

F. Review Under the Paperwork Reduction Act

This rule was reviewed pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.* The proposed rule requires collections of information necessary for implementing and monitoring compliance with the efficiency standards, testing, labeling and certification requirements for electric motors, as mandated by EPCA. The Department set forth its analysis, under the Paperwork Reduction Act, in the NOPR, 61 FR 60462 (November 27, 1996).

The recordkeeping and reporting requirements in the proposed rule, such as disclosing energy efficiency on the nameplate of a motor and in marketing materials, maintaining records that substantiate the efficiency of an electric motor for two years, and a one-time Compliance Certification that affirms that each basic model meets the applicable EPCA efficiency standard, were based on current industry practice and the views of stakeholders received at a public meeting held in May 1995, in written comments solicited in the notice of that meeting, and in subsequent informal contacts. Comments relevant to the information and recordkeeping requirements that were considered under the Paperwork Reduction Act, such as comments on labeling, disclosure of efficiency information in marketing materials, compliance certification and recordkeeping, were submitted by NEMA, Reliance Electric, Underwriters Laboratories, and the American Council for an Energy Efficient Economy, and were addressed in the NOPR, 61 FR 60451–54; 60458–59 (November 27, 1996). (NEMA, No. 9 at C., D. and D.3.; Reliance, No. 8 at 3.b.3, 3.c. and 3.d.1; UL, No. 4 at Labeling; ACEEE, No. 7 at 3.c). Subsequent comments concerning the information and recordkeeping requirements at proposed sections 431.24(b)(4)(ii), 431.82, 431.123 and appendix A to subpart G, and 431.124 in the proposed rule, were addressed above (Treffinger, No. 4; WSU/WSD, No. 5; UL, No. 9; Ruggiero, No. 17; and NEMA, No. 18). Commenters were, in general, supportive of the proposed rule.

The information collection and recordkeeping requirements in this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 1910–5104. OMB assigns a control number for each collection of information it approves. DOE 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 number.

G. Review Under Executive Order 12988, ''Civil Justice Reform'

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirement: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and (4) promote simplification and burden reduction.

With regard to the review required by section 3(a), section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's final rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, they meet the requirements of those standards.

H. Review Under Section 32 of the Federal Energy Administration Act

Pursuant to section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy is required to comply with section 32 of the Federal Energy Administration Act of 1974 (FEAA), as amended by the Federal Energy Administration Authorization Act of 1977. 15 U.S.C. 788.

The final rule incorporates a number of commercial standards that are essentially required by the Act. For example, the procedures required for measuring the efficiency of electric motors come from the NEMA publication, ''Motors and Generators,'' MG1–1993 Revisions 1 through 4; the

Institute of Electrical and Electronics Engineers, Inc., ''Standard Test Procedure for Polyphase Induction Motors and Generators,'' IEEE Std 112–1996 Test Method B for motor efficiency; and CSA International Standard C390–93, ''Energy Efficiency Test Methods for Three-Phase Induction Motors,'' Test Method (1). By way of further example, certain definitions in the final rule are drawn from NEMA Publication MG1. Because the Department has little discretion to omit these standards from its regulation, section 32 of the FEAA has no application to them.

As part of its definition of electric motor, however, the final rule does employ the commercial International Electrotechnical Commission Standards 60034–1, 60034–12, 60050(411) and 60072–1, which the Act does not direct the Department to adopt. In addition, as proposed in the NOPR, 61 FR 60449–50, 60469–70 (November 27, 1996), the Department has incorporated into the final rule the standard kilowatt equivalents specified in IEC Standard 72–1 for the horsepower ratings that EPCA prescribes standards for.

As required by section 32(c) of the FEAA, the Department has consulted with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of these standards on competition, and neither has recommended against incorporation or use of these standards.

I. Review Under the Unfunded Mandates Reform Act

This regulatory action was reviewed pursuant to the Unfunded Mandates Reform Act of 1995 (UMRA), and the Department concluded that the requirements of sections 203 and 204 of the UMRA did not apply to today's final rule. 61 FR 60463 (November 27, 1996). There were no comments concerning the UMRA. Therefore, the Department will take no further action in today's final rule with respect to the UMRA.

J. Review Under the Small Business Regulatory Enforcement Fairness Act

Consistent with Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801–808, DOE will submit to Congress a report regarding the issuance of today's final rule before the effective date set forth in the outset of this notice. The report will state that it has been determined that this rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Energy conservation, Incorporation by reference.

Issued in Washington, DC, July 26, 1999.

Dan W. Reicher,

Assistant Secretary for Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Chapter II of Title 10, Code of Federal Regulations (CFR), is amended by adding new Part 431 to read as set forth below.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

Subpart A—General Provisions

Sec.
431.1 Purpose and scope.
431.2 Definitions.
Appendix A to Subpart A of 10 CFR Part 431, Policy Statement for Electric Motors Covered Under the Energy Policy and Conservation Act

Subpart B—Test Procedures and Materials Incorporated

431.21 Purpose and scope.
431.22 Reference sources.
431.23 Test procedures for measurement of energy efficiency.
431.24 Determination of efficiency.
431.25 Testing laboratories.
431.26 Department of Energy recognition of accreditation bodies.
431.27 Department of Energy recognition of nationally recognized certification programs.
431.28 Procedures for recognition and withdrawal of recognition of accreditation bodies and certification programs.
431.29 Petitions for waiver, and applications for interim waiver, of test procedure.
Appendix A to Subpart B of Part 431—Uniform Test Method for Measuring Nominal Full Load Efficiency of Electric Motors

Subpart C—Energy Conservation Standards

431.41 Purpose and scope.
431.42 Energy conservation standards and effective dates.
431.43 Preemption of state regulations.

Subpart D—Petitions to Exempt State Regulation from Preemption; Petitions to Withdraw Exemption of State Regulation

431.61 Purpose and scope.
431.62 Prescriptions of a rule.
431.63 Filing requirements.
431.64 Notice of petition.
431.65 Consolidation.
431.66 Hearing.
431.67 Disposition of petitions.
431.68 Effective dates of final rules.
431.69 Request for reconsideration.
431.70 Finality of decision.

Subpart E—Labeling

431.81 Purpose and scope.
431.82 Labeling requirements.
431.83 Preemption of state regulations.

Subpart F—[Reserved]

Subpart G—Certification and Enforcement

431.121 Purpose and scope.
431.122 Prohibited acts.
431.123 Compliance Certification.
431.124 Maintenance of records.
431.125 Imported equipment.
431.126 Exported equipment.
431.127 Enforcement.
431.128 Cessation of distribution of a basic model.
431.129 Subpoena.
431.130 Remedies.
431.131 Hearings and appeals.
431.132 Confidentiality.
Appendix A to Subpart G of Part 431—Compliance Certification
Appendix B to Subpart G of Part 431—Sampling Plan for Enforcement Testing

Authority: 42 U.S.C. 6311–6316

Subpart A—General Provisions

§ 431.1 Purpose and scope.

This part establishes the regulations for the implementation of Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6311–6316, which establishes an energy conservation program for certain industrial equipment.

§ 431.2 Definitions.

For purposes of this part, words shall be defined as provided for in section 340 of the Act and as follows—

Accreditation means recognition by an accreditation body that a laboratory is competent to test the efficiency of electric motors according to the scope and procedures given in Test Method B of IEEE Standard 112–1996, *Test Procedure for Polyphase Induction Motors and Generators,* and Test Method (1) of CSA Standard C390–93, *Energy Efficient Test Methods for Three-Phase Induction Motors.*

Accreditation body means an organization or entity that conducts and administers an accreditation system and grants accreditation.

Accreditation system means a set of requirements to be fulfilled by a testing laboratory, as well as rules of procedure and management, that are used to accredit laboratories.

Accredited laboratory means a testing laboratory to which accreditation has been granted.

Act means the Energy Policy and Conservation Act of 1975, as amended (42 U.S.C. 6291 *et seq.*).

Alternative efficiency determination method or *AEDM* means a method of calculating the total power loss and average full load efficiency of an electric motor.

Average full load efficiency means the arithmetic mean of the full load efficiencies of a population of electric motors of duplicate design, where the full load efficiency of each motor in the population is the ratio (expressed as a percentage) of the motor's useful power output to its total power input when the motor is operated at its full rated load, rated voltage, and rated frequency.

Basic model means all units of a given type of covered equipment (or class thereof) manufactured by a single manufacturer, and, with respect to electric motors, which have the same rating, have electrical characteristics that are essentially identical, and do not have any differing physical or functional characteristics which affect energy consumption or efficiency. For the purpose of this definition, ''rating'' means one of the 113 combinations of an electric motor's horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction, with respect to which § 431.42 prescribes nominal full load efficiency standards.

Certificate of conformity means a document that is issued by a certification program, and that gives written assurance that an electric motor complies with the energy efficiency standard applicable to that motor, as specified in 10 CFR 431.42.

Certification program means a certification system that determines conformity by electric motors with the energy efficiency standards prescribed by and pursuant to the Act.

Certification system means a system, that has its own rules of procedure and management, for giving written assurance that a product, process, or service conforms to a specific standard or other specified requirements, and that is operated by an entity independent of both the party seeking the written assurance and the party providing the product, process or service.

Covered equipment means industrial equipment of a type specified in section 340 of the Act.

CSA means CSA International.

Definite purpose motor means any motor designed in standard ratings with standard operating characteristics or standard mechanical construction for use under service conditions other than usual, such as those specified in NEMA Standards Publication MG1–1993, *Motors and Generators,* paragraph 14.03, ''Unusual Service Conditions,'' or for use on a particular type of application, and which cannot be used in most general purpose applications.

DOE or *the Department* means the Department of Energy.

Electric motor is defined as follows:

(1) ''Electric motor'' means a machine which converts electrical power into rotational mechanical power and which:

(i) is a general purpose motor, including but not limited to motors with explosion-proof construction;

(ii) is a single speed, induction motor (MG1);

(iii) is rated for continuous duty (MG1) operation, or is rated duty type S1 (IEC);

(iv) contains a squirrel-cage (MG1) or cage (IEC) rotor, and has foot-mounting, including foot-mounting with flanges or detachable feet;

(v) is built in accordance with NEMA T-frame dimensions (MG1), or IEC metric equivalents (IEC);

(vi) has performance in accordance with NEMA Design A (MG1) or B (MG1) characteristics, or equivalent designs such as IEC Design N (IEC); and

(vii) operates on polyphase alternating current 60-Hertz sinusoidal power, and:

(A) is rated 230 volts or 460 volts, or both, including any motor that is rated at multi-voltages that include 230 volts or 460 volts, or

(B) can be operated on 230 volts or 460 volts, or both.

(2) Terms in this definition followed by the parenthetical ''MG1'' must be construed with reference to provisions in NEMA Standards Publication MG1–1993, *Motors and Generators,* with Revisions 1, 2, 3 and 4, as follows:

(i) Section I, *General Standards Applying to All Machines,* Part 1, *Referenced Standards and Definitions,* paragraphs 1.16.1, 1.16.1.1, 1.17.1.1, 1.17.1.2, and 1.40.1 pertain to the terms ''induction motor,'' ''squirrel-cage,'' ''NEMA Design A,'' ''NEMA Design B,'' and ''continuous duty'' respectively;

(ii) Section I, *General Standards Applying to All Machines,* Part 4, *Dimensions, Tolerances, and Mounting,* paragraph 4.01 and Figures 4–1, 4–2, 4–3, and 4–4 pertain to ''NEMA T-frame dimensions;''

(iii) Section II, *Small (Fractional) and Medium (Integral) Machines,* Part 11, *Dimensions—AC and DC Small and Medium Machines,* paragraphs 11.01.2, 11.31 (except the lines for frames 447T, 447TS, 449T and 449TS), 11.32, 11.34 (except the line for frames 447TC and 449TC, and the line for frames 447TSC and 449TSC), 11.35, and 11.36 (except the line for frames 447TD and 449TD, and the line for frames 447TSD and 449TSD), and Table 11–1, pertain to ''NEMA T-frame dimensions;'' and

(iv) Section II, *Small (Fractional) and Medium (Integral) Machines,* Part 12, *Tests and Performance—AC and DC Motors,* paragraphs 12.35.1, 12.35.5, 12.38.1, 12.39.1, and 12.40.1, and Table 12–2, pertain both to ''NEMA Design A'' and ''NEMA Design B.''

(3) Terms in this definition followed by the parenthetical ''IEC'' must be construed with reference to provisions in IEC Standards as follows:

(i) IEC Standard 60034–1 (1996), *Rotating electrical machines,* Part 1: *Rating and performance,* with Amendment 1 (1997), Section 3: *Duty,* clause 3.2.1 and figure 1 pertain to ''duty type S1'';

(ii) IEC Standard 60050–411 (1996), *International Electrotechnical Vocabulary Chapter 411: Rotating machines,* sections 411–33–07 and 411–37–26, pertain to ''cage'';

(iii) IEC Standard 60072–1 (1991), *Dimensions and output series for rotating electrical machines—Part 1: Frame numbers 56 to 400 and flange numbers 55 to 1080,* clauses 2, 3, 4.1, 6.1, 7, and 10, and Tables 1, 2 and 4, pertain to ''IEC metric equivalents'' to ''T-frame'' dimensions; and

(iv) IEC Standard 60034–12 (1980), *Rotating electrical machines, Part 12: Starting performance of single-speed three-phase cage induction motors for voltages up to and including 660 V,* with Amendment 1 (1992) and Amendment 2 (1995), clauses 1, 2, 3.1, 4, 5, and 6, and Tables I, II, and III, pertain to ''IEC Design N.''

Enclosed motor means an electric motor so constructed as to prevent the free exchange of air between the inside and outside of the case but not sufficiently enclosed to be termed airtight.

EPCA means the Energy Policy and Conservation Act of 1975, as amended (42 U.S.C. 6291 *et seq.*).

General purpose motor means any motor which is designed in standard ratings with either:

(1) Standard operating characteristics and standard mechanical construction for use under usual service conditions, such as those specified in NEMA Standards Publication MG1–1993, paragraph 14.02, ''Usual Service Conditions,'' and without restriction to a particular application or type of application; or

(2) Standard operating characteristics or standard mechanical construction for use under unusual service conditions, such as those specified in NEMA Standards Publication MG1–1993, paragraph 14.03, ''Unusual Service Conditions,'' or for a particular type of application, and which can be used in most general purpose applications.

IEC means the International Electrotechnical Commission.

IEEE means the Institute of Electrical and Electronics Engineers, Inc.

ISO means International Organization for Standardization.

Manufacture means to manufacture, produce, assemble, or import.

NEMA means the National Electrical Manufacturers Association.

Nominal full load efficiency of an electric motor means a representative value of efficiency selected from Column A of Table 12–8, NEMA Standards Publication MG1–1993, that is not greater than the average full load efficiency of a population of motors of the same design.

Open motor means an electric motor having ventilating openings which permit passage of external cooling air over and around the windings of the machine.

Secretary means the Secretary of the Department of Energy.

Special purpose motor means any motor, other than a general purpose motor or definite purpose motor, which has special operating characteristics or special mechanical construction, or both, designed for a particular application.

Total power loss means that portion of the energy used by an electric motor not converted to rotational mechanical power, expressed in percent.

Appendix A to Subpart A of 10 CFR Part 431, Policy Statement for Electric Motors Covered Under the Energy Policy and Conservation Act

This is a reprint of a policy statement which was published on November 5, 1997 at 62 FR 59978.

Policy Statement for Electric Motors Covered Under the Energy Policy and Conservation Act

I. Introduction

The Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6311, *et seq.*, establishes energy efficiency standards and test procedures for certain commercial and industrial electric motors manufactured (alone or as a component of another piece of equipment) after October 24, 1997, or, in the case of an electric motor which requires listing or certification by a nationally recognized safety testing laboratory, after October 24, 1999.[1] EPCA also directs the Department of Energy (DOE or Department) to implement the statutory test procedures prescribed for motors, and to require efficiency labeling of motors and certification that covered motors comply with the standards.

Section 340(13)(A) of EPCA defines the term ''electric motor'' based essentially on the construction and rating system in the National Electrical Manufacturers Association (NEMA) Standards Publication MG1. Sections 340(13)(B) and (C) of EPCA define the terms ''definite purpose motor'' and ''special purpose motor,'' respectively, for which the statute prescribes no efficiency standards.

In its proposed rule to implement the EPCA provisions that apply to motors (61 FR 60440, November 27, 1996), DOE has proposed to clarify the statutory definition of ''electric motor,'' to mean a machine which converts electrical power into rotational mechanical power and which: (1) is a general purpose motor, including motors with explosion-proof construction;[2] (2) is a single speed, induction motor; (3) is rated for continuous duty operation, or is rated duty type S–1 (IEC)[3]; (4) contains a squirrel-cage or cage (IEC) rotor; (5) has foot-mounting, including foot-mounting with flanges or detachable feet; (6) is built in accordance with NEMA T-frame dimensions, or IEC metric equivalents (IEC); (7) has performance in accordance with NEMA Design A or B characteristics, or equivalent designs such as IEC Design N (IEC); and (8) operates on polyphase alternating current 60-Hertz sinusoidal power, and is (i) rated 230 volts or 460 volts, or both, including any motor that is rated at multi-voltages that include 230 volts or 460 volts, or (ii) can be operated on 230 volts or 460 volts, or both.

Notwithstanding the clarification provided in the proposed rule, there still appears to be uncertainty as to which motors EPCA covers. It is widely understood that the statute covers ''general purpose'' motors that are manufactured for a variety of applications, and that meet EPCA's definition of ''electric motor.'' Many modifications, however, can be made to such generic motors. Motor manufacturers have expressed concern as to precisely which motors with such modifications are covered under the statute, and as to whether manufacturers will be able to comply with the statute by October 25, 1997 with respect to all of these covered motors. Consequently, motor manufacturers have requested that the Department provide additional guidance as to which types of motors are ''electric motors,'' ''definite purpose motors,'' and ''special purpose motors'' under EPCA. The policy statement that follows is based upon input from motor manufacturers and energy efficiency advocates, and provides such guidance.

II. Guidelines for Determining Whether a Motor Is Covered by EPCA

A. General

EPCA specifies minimum nominal full-load energy efficiency standards for 1 to 200 horsepower electric motors, and, to measure compliance with those standards, prescribes use of the test procedures in NEMA Standard MG1 and Institute of Electrical and Electronics Engineers, Inc., (IEEE) Standard 112. In DOE's view, as stated in Assistant Secretary Ervin's letter of May 9, 1996, to NEMA's Malcolm O'Hagan, until DOE's regulations become effective, manufacturers can establish compliance with these EPCA requirements through use of competent and reliable procedures or methods that give reasonable assurance of such compliance. So long as these criteria are met, manufacturers may conduct required testing in their own laboratories or in independent laboratories, and may employ alternative correlation methods (in lieu of actual testing) for some motors. Manufacturers may also establish their compliance with EPCA standards and test procedures through use of third party certification or verification programs such as those recognized by Natural Resources Canada. Labeling and certification requirements will become effective only after DOE has promulgated a final rule prescribing such requirements.

Motors with features or characteristics that do not meet the statutory definition of ''electric motor'' are not covered, and therefore are not required to meet EPCA requirements. Examples include motors without feet and without provisions for feet, and variable speed motors operated on a variable frequency power supply. Similarly, multispeed motors and variable speed motors, such as inverter duty motors, are not covered equipment, based on their intrinsic design for use at variable speeds. However, NEMA Design A or B motors that are single speed, meet all other criteria under the definitions in EPCA for covered

[1] The term ''manufacture'' means ''to manufacture, produce, assemble or import.'' EPCA section 321(10). Thus, the standards apply to motors produced, assembled, imported or manufactured after these statutory deadlines.

[2] Section 342(b)(1) of EPCA recognizes that EPCA's efficiency standards cover ''motors which require listing or certification by a nationally recognized safety testing laboratory.'' This applies, for example, to explosion-proof motors which are otherwise general purpose motors.

[3] Terms followed by the parenthetical ''IEC'' are referred to in the International Electrotechnical Commission (IEC) Standard 34–1. Such terms are included in DOE's proposed definition of ''electric motor'' because DOE believes EPCA's efficiency requirements apply to metric system motors that conform to IEC Standard 34, and that are identical or equivalent to motors constructed in accordance with NEMA MG1 and covered by the statute.

equipment, and can be used with an inverter in variable speed applications as an additional feature, are covered equipment under EPCA. In other words, being suitable for use on an inverter by itself does not exempt a motor from EPCA requirements.

Section 340(13)(F) of EPCA, defines a ''small electric motor'' as ''a NEMA general purpose alternating current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG 1–1987.'' Section 346 of EPCA requires DOE to prescribe testing requirements and efficiency standards only for those small electric motors for which the Secretary determines that standards are warranted. The Department has not yet made such a determination.

B. Electrical Features

As noted above, the Department's proposed definition of ''electric motor'' provides in part that it is a motor that ''operates on polyphase alternating current 60-Hertz sinusoidal power, and * * * can be operated on 230 volts or 460 volts, or both.'' In DOE's view, ''can be operated'' implicitly means that the motor can be operated successfully. According to NEMA Standards Publication MG1–1993, paragraph 12.44, ''Variations from Rated Voltage and Rated Frequency,'' alternating-current motors must operate successfully under running conditions at rated load with a variation in the voltage or the frequency up to the following: plus or minus 10 percent of rated voltage, with rated frequency for induction motors;[4] plus or minus 5 percent of rated frequency, with rated voltage; and a combined variation in voltage and frequency of 10 percent (sum of absolute values) of the rated values, provided the frequency variation does not exceed plus or minus 5 percent of rated frequency. DOE believes that, for purposes of determining whether a motor meets EPCA's definition of ''electric motor,'' these criteria should be used to determine when a motor that is not rated at 230 or 460 volts or 60 Hertz can be operated at such voltage and frequency.[5]

NEMA Standards Publication MG1 categorizes electrical modifications to motors according to performance characteristics that include locked rotor torque, breakdown torque, pull-up torque, locked rotor current, and slip at rated load, and assigns design letters, such as Design A, B, C, D, or E, to identify various combinations of such electrical performance characteristics. Under section 340(13)(A) of EPCA, electric motors subject to EPCA efficiency requirements include only motors that fall within NEMA ''Design A and B * * * as defined in [NEMA] Standards Publication MG1–1987.'' As to locked rotor torque, for example, MG1 specifies a minimum performance value for a Design A or B motor of a given speed and horsepower, and somewhat higher minimum values for Design C and D motors of the same speed and horsepower. The Department understands that, under MG1, the industry classifies a motor as Design A or B if it has a locked rotor torque at or above the minimum for A and B but below the minimum for Design C, so long as it otherwise meets the criteria for Design A or B. Therefore, in the Department's view, such a motor is covered by EPCA's requirements for electric motors. By contrast a motor that meets or exceeds the minimum locked rotor torque for Design C or D is not covered by EPCA. In sum, if a motor has electrical modifications that meet Design A or B performance requirements it is covered by EPCA, and if its characteristics meet Design C, D or E it is not covered.

C. Size

Motors designed for use on a particular type of application which are in a frame size that is one or more frame *series* larger than the frame size assigned to that rating by sections 1.2 and 1.3 of NEMA Standards Publication MG 13–1984 (R1990), ''Frame Assignments for Alternating Current Integral-Horsepower Induction Motors,'' are not, in the Department's view, usable in most general purpose applications. This is due to the physical size increase associated with a frame series change. A frame series is defined as the first two digits of the frame size designation. For example, 324T and 326T are both in the same frame series, while 364T is in the next larger frame series. Hence, in the Department's view, a motor that is of a larger frame series than normally assigned to that standard rating of motor is not covered by EPCA. A physically larger motor within the same frame series would be covered, however, because it would be usable in most general purpose applications.

Motors built in a T-frame series or a T-frame size *smaller* than that assigned by MG 13–1984 (R1990) are also considered usable in most general purpose applications. This is because simple modifications can generally be made to fit a smaller motor in place of a motor with a larger frame size assigned in conformity with NEMA MG 13. Therefore, DOE believes that such smaller motors are covered by EPCA.

D. Motors with Seals

Some electric motors have seals to prevent ingress of water, dust, oil, and other foreign materials into the motor. DOE understands that, typically, a manufacturer will add seals to a motor that it manufactures, so that it will sell two motors that are identical except that one has seals and the other does not. In such a situation, if the motor without seals is ''general purpose'' and covered by EPCA's efficiency requirements, then the motor with seals will also be covered because it can still be used in most general purpose applications. DOE understands, however, that manufacturers previously believed motors with seals were not covered under EPCA, in part because IEEE Standard 112, ''Test Procedure for Polyphase Induction Motors and Generators,'' prescribed by EPCA, does not address how to test a motor with seals installed.

The efficiency rating of such a motor, if determined with seals installed and when the motor is new, apparently would significantly understate the efficiency of the motor as operated. New seals are stiff, and provide friction that is absent after their initial break-in period. DOE understands that, after this initial period, the efficiency ratings determined for the same motor with and without seals would be virtually identical. To construe EPCA, therefore, as requiring such separate efficiency determinations would impose an unnecessary burden on manufacturers.

In light of the foregoing, the Department believes that EPCA generally permits the efficiency of a motor with seals to be determined without the seals installed. Furthermore, notwithstanding the prior belief that such motors are not covered by EPCA, use of this approach to determining efficiency will enable manufacturers to meet EPCA's standards

[4] For example, a motor that is rated at 220 volts should operate successfully on 230 volts, since 220 + .10(220) = 242 volts. A 208 volt motor, however, would not be expected to operate successfully on 230 volts, since 208 + .10(208) = 228.8 volts.

[5] The Department understands that a motor that can operate at such voltage and frequency, based on variations defined for successful operation, will not necessarily perform in accordance with the industry standards established for operation at the motor's *rated* voltage and frequency. In addition, under the test procedures prescribed by EPCA, motors are to be tested at their rated values. Therefore, in DOE's view a motor that is not rated for 230 or 460 volts, or 60 Hertz, but that can be successfully operated at these levels, must meet the energy efficiency requirements at its rated voltage(s) and frequency. DOE also notes that when a motor is rated to include a wider voltage range that includes 230/460 volts, the motor should meet the energy efficiency requirements at 230 volts or 460 volts.

with respect to covered motors with seals by the date the standards go into effect on October 25, 1997.

III. Discussion of How DOE Would Apply EPCA Definitions, Using the Foregoing Guidelines

Using the foregoing guidelines, the attached matrix provides DOE's view as to which motors with common features are covered by EPCA. Because manufacturers produce many basic models that have many modifications of generic general purpose motors, the Department does not represent that the matrix is all-inclusive. Rather it is a set of examples demonstrating how DOE would apply EPCA definitions, as construed by the above guidelines, to various motor types. By extension of these examples, most motors currently in production, or to be designed in the future, could probably be classified. The matrix classifies motors into five categories, which are discussed in the following passages.

Category I—For ''electric motors'' (manufactured alone or as a component of another piece of equipment) in Category I, DOE will enforce EPCA efficiency standards and test procedures beginning on October 25, 1997

The Department understands that some motors essentially are relatively simple modifications of generic general purpose motors. Modifications could consist, for example, of minor changes such as the addition of temperature sensors or a heater, the addition of a shaft extension and a brake disk from a kit, or changes in exterior features such as the motor housing. Such motors can still be used for most general purpose applications, and the modifications have little or no effect on motor performance. Nor do the modifications affect energy efficiency.

Category II—For certain motors that are ''definite purpose'' according to present industry practice, but that can be used in most general purpose applications, DOE will generally enforce EPCA efficiency standards and test procedures beginning no later than October 25, 1999

General Statement

EPCA does not prescribe standards and test procedures for ''definite purpose motors.'' Section 340(13)(B) of EPCA defines the term ''definite purpose motor'' as ''any motor designed in standard ratings with standard operating characteristics or standard mechanical construction for use under service conditions other than usual or for use on a particular type of application *and which cannot be used in most general purpose applications.*'' [Emphasis added.] Except, significantly, for exclusion of the italicized language, the industry definition of ''definite purpose motor,'' set forth in NEMA MG1, is identical to the foregoing.

Category II consists of electric motors with horsepower ratings that fall between the horsepower ratings in section 342(b)(1) of EPCA, thermally protected motors, and motors with roller bearings. As with motors in Category I, these motors are essentially modifications of generic general purpose motors. Generally, however, the modifications contained in these motors are more extensive and complex than the modifications in Category I motors. These Category II motors have been considered ''definite purpose'' in common industry parlance, but are covered equipment under EPCA because they *can be used in most general purpose applications.*

According to statements provided during the January 15, 1997, Public Hearing, Tr. pgs. 238–239, Category II motors were, until recently, viewed by most manufacturers as definite purpose motors, consistent with the industry definition that did not contain the clause ''which cannot be used in most general purpose applications.'' Hence, DOE understands that many manufacturers assumed these motors were not subject to EPCA's efficiency standards. During the period prior and subsequent to the hearing, discussions among manufacturers resulted in a new understanding that such motors are general purpose under EPCA, since they *can* be used in most general purpose applications. Thus, the industry only recently recognized that such motors are covered under EPCA. Although the statutory definition adopted in 1992 contained the above-quoted definition of ''definite purpose,'' the delay in issuing regulations which embody this definition may have contributed to industry's delay in recognizing that these motors are covered.

The Department understands that redesign and testing these motors in order to meet the efficiency standards in the statute may require a substantial amount of time. Given the recent recognition that they are covered, it is not realistic to expect these motors will be able to comply by October 25, 1997. A substantial period beyond that will be required. Moreover, the Department believes different manufacturers will need to take different approaches to achieving compliance with respect to these motors, and that, for a particular type of motor, some manufacturers will be able to comply sooner than others. Thus, the Department intends to refrain from taking enforcement action for two years, until October 25, 1999, with respect to motors with horsepower ratings that fall between the horsepower ratings in section 342(b)(1) of EPCA, thermally protected motors, and motors with roller bearings. Manufacturers are encouraged, however, to manufacture these motors in compliance with EPCA at the earliest possible date.

The following sets forth in greater detail, for each of these types of motors, the basis for the Department's policy to refrain from enforcement for two years. Also set forth is additional explanation of the Department's understanding as to why manufacturers previously believed intermediate horsepower motors were not covered by EPCA.

Intermediate Horsepower Ratings

Section 342(b)(1) of EPCA specifies efficiency standards for electric motors with 19 specific horsepower ratings, ranging from one through 200 horsepower. Each is a preferred or standardized horsepower rating as reflected in the table in NEMA Standards Publication MG1–1993, paragraph 10.32.4, *Polyphase Medium Induction Motors.* However, an ''electric motor,'' as defined by EPCA, can be built at other horsepower ratings, such as 6 horsepower, 65 horsepower, or 175 horsepower. Such motors, rated at horsepower levels between any two adjacent horsepower ratings identified in section 342(b)(1) of EPCA will be referred to as ''intermediate horsepower motors.'' In the Department's view, efficiency standards apply to every motor that has a rating from one through 200 horsepower (or kilowatt equivalents), and that otherwise meets the criteria for an ''electric motor'' under EPCA, including an electric motor with an intermediate horsepower (or kW) rating.

To date, these motors have typically been designed in conjunction with and supplied to a specific customer to fulfill certain performance and design requirements of a particular application, as for example to run a certain type of equipment. See the discussion in Section IV below on ''original equipment'' and ''original equipment manufacturers.'' In large part for these reasons, manufacturers believed intermediate horsepower motors to be ''definite purpose motors'' that were not covered by EPCA. Despite their specific uses, however, these motors are electric motors under EPCA when they are capable of being used in most general purpose applications.

Features of a motor that are directly related to its horsepower rating include

its physical size, and the ratings of its controller and protective devices. These aspects of a 175 horsepower motor, for example, which is an intermediate horsepower motor, must be appropriate to that horsepower, and would generally differ from the same aspects of 150 and 200 horsepower motors, the two standard horsepower ratings closest to 175. To re-design an existing intermediate horsepower electric motor so that it complies with EPCA could involve all of these elements of a motor's design. For example, the addition of material necessary to achieve EPCA's prescribed level of efficiency could cause the size of the motor to increase. The addition of magnetic material would invite higher inrush current that could cause an incorrectly sized motor controller to malfunction, or the circuit breaker with a standard rating to trip unnecessarily, or both. The Department believes motor manufacturers will require a substantial amount of time to redesign and retest each intermediate horsepower electric motor they manufacture.

To the extent such intermediate horsepower electric motors become unavailable because motor manufacturers have recognized only recently that they are covered by EPCA, equipment in which they are incorporated would temporarily become unavailable also. Moreover, re-design of such a motor to comply with EPCA could cause changes in the motor that require re-design of the equipment in which the motor is used. For example, if an intermediate horsepower electric motor becomes larger, it might no longer fit in the equipment for which it was designed. In such instances, the equipment would have to be re-designed. Because these motors were previously thought not to be covered, equipment manufacturers may not have had sufficient lead time to make the necessary changes to the equipment without interrupting its production.

With respect to intermediate horsepower motors, the Department intends to refrain from enforcing EPCA for a period of 24 months only as to such motor designs that were being manufactured prior to the date this Policy Statement was issued. The Department is concerned that small adjustments could be made to the horsepower rating of an existing electric motor, in an effort to delay compliance with EPCA, if it delayed enforcement as to all intermediate horsepower motors produced during the 24 month period. For example, a 50 horsepower motor that has a service factor of 1.15 could be renameplated as a 57½ horsepower motor that has a 1.0 service factor. By making this delay in enforcement applicable only to pre-existing designs of intermediate horsepower motors, the Department believes it has made adequate provision for the manufacture of bona fide intermediate horsepower motor designs that cannot be changed to be in compliance with EPCA by October 25, 1997.

Thermally Protected Motors

The Department understands that in order to redesign a thermally protected motor to improve its efficiency so that it complies with EPCA, various changes in the windings must be made which will require the thermal protector to be re-selected. Such devices sense the inrush and running current of the motor, as well as the operating temperature. Any changes to a motor that affect these characteristics will prevent the protector from operating correctly. When a new protector is selected, the motor must be tested to verify proper operation of the device in the motor. The motor manufacturer would test the locked rotor and overload conditions, which could take several days, and the results may dictate that a second selection is needed with additional testing. When the manufacturer has finished testing, typically the manufacturer will have a third party conduct additional testing. This testing may include cycling the motor in a locked-rotor condition to verify that the protector functions properly. This testing may take days or even weeks to perform for a particular model of motor.

Since it was only recently recognized by industry that these motors are covered by EPCA, in the Department's view the total testing program makes it impossible for manufacturers to comply with the EPCA efficiency levels in thermally protected motors by October 25, 1997, especially since each different motor winding must be tested and motor winding/thermal protector combinations number in the thousands.

Motors With Roller Bearings

Motors with roller bearings fit within the definition of electric motor under the statute. However, because the IEEE Standard 112 Test Method B does not provide measures to test motors with roller bearings installed, manufacturers mistakenly believed such motors were not covered. Under IEEE Standard 112, a motor with roller bearings could only be tested for efficiency with the roller bearings removed and standard ball bearings installed as temporary substitutes. Then on the basis of the energy efficiency information gained from that test, the manufacturer may need to redesign the motor in order to comply with the statute. In this situation, the Department understands that testing, redesigning, and retesting lines of motors with roller bearings, to establish compliance, would be difficult and time consuming.

Categories III, IV and V—Motors not within EPCA's definition of ''electric motor,'' and not covered by EPCA

Close-coupled Pump Motors

NEMA Standards Publication MG1–1993, with revisions one through three, Part 18, ''Definite-Purpose Machines,'' defines ''a face-mounting close-coupled pump motor'' as ''a medium alternating-current squirrel-cage induction open or totally enclosed motor, with or without feet, having a shaft suitable for mounting an impeller and sealing device.'' Paragraphs MG1–18.601–18.614 specify its performance, face and shaft mounting dimensions, and frame assignments that replace the suffix letters T and TS with the suffix letters JM and JP.

The Department understands that such motors are designed in standard ratings with standard operating characteristics for use in certain close-coupled pumps and pumping applications, but cannot be used in non-pumping applications, such as, for example, conveyors. Consequently, the Department believes close-coupled pump motors are definite-purpose motors not covered by EPCA. However, a motor that meets EPCA's definition of ''electric motor,'' and which can be coupled to a pump, for example by means of a C-face or D-flange endshield, as depicted in NEMA Standards Publication MG1, Part 4, ''Dimensions, Tolerances, and Mounting,'' is covered.

Totally-enclosed Non-ventilated (TENV) and Totally-enclosed Air-over (TEAO) Motors

A motor designated in NEMA MG1–1993, paragraph MG1–1.26.1, as ''totally-enclosed non-ventilated (IP54, IC410)'' [6] is ''not equipped for cooling by means external to the enclosing parts.'' This means that the motor, when properly applied, does not require the use of any additional means of cooling

[6] IP refers to the IEC Standard 34–5: Classification of degrees of protection provided by enclosures for rotating machines. IC refers to the IEC Standard 34–6: Methods of cooling rotating machinery. The IP and IC codes are referenced in the NEMA designations for TENV and TEAO motors in MG1–1993 Part 1, ''Classification According to Environmental Protection and Methods of Cooling,'' as a Suggested Standard for Future Design, since the TENV and TEAO motors conform to IEC Standards. Details of protection (IP) and methods of cooling (IC) are defined in MG1 Part 5 and Part 6, respectively.

installed external to the motor enclosure. The TENV motor is cooled by natural conduction and natural convection of the motor heat into the surrounding environment. As stated in NEMA MG1–1993, Suggested Standard for Future Design, paragraph MG1–1.26.1a, a TENV motor ''is only equipped for cooling by free convection.'' The general requirement for the installation of the TENV motor is that it not be placed in a restricted space that would inhibit this natural dissipation of the motor heat. Most general purpose applications use motors which include a means for forcing air flow through or around the motor and usually through the enclosed space and, therefore, can be used in spaces that are more restrictive than those required for TENV motors. Placing a TENV motor in such common restricted areas is likely to cause the motor to overheat. The TENV motor may also be larger than the motors used in most general purpose applications, and would take up more of the available space, thus reducing the size of the open area surrounding the motor. Installation of a TENV motor might require, therefore, an additional means of ventilation to continually exchange the ambient around the motor.

A motor designated in NEMA MG1–1993 as ''totally-enclosed air-over (IP54, IC417)'' is intended to be cooled by ventilation means external to (i.e., separate and independent from) the motor, such as a fan. The motor must be provided with the additional ventilation to prevent it from overheating.

Consequently, neither the TENV motor nor the TEAO motor would be suitable for most general purpose applications, and, DOE believes they are definite-purpose motors not covered by EPCA.

Integral Gearmotors

An ''integral gearmotor'' is an assembly of a motor and a specific gear drive or assembly of gears, such as a gear reducer, as a unified package. The motor portion of an integral gearmotor is not necessarily a complete motor, since the end bracket or mounting flange of the motor portion is also part of the gear assembly and cannot be operated when separated from the complete gear assembly. Typically, an integral gearmotor is not manufactured to standard T-frame dimensions specified in NEMA MG1. Moreover, neither the motor portion, nor the entire integral gearmotor, are capable of being used in most general purpose applications without significant modifications. An integral gearmotor is also designed for a specific purpose and can have unique performance characteristics, physical dimensions, and casing, flange and shafting configurations. Consequently, integral gearmotors are outside the scope of the EPCA definition of ''electric motor'' and are not covered under EPCA.

However, an ''electric motor,'' as defined by EPCA, which is connected to a stand alone mechanical gear drive or an assembly of gears, such as a gear reducer connected by direct coupling, belts, bolts, a kit, or other means, is covered equipment under EPCA.

IV. Electric Motors That Are Components in Certain Equipment

The primary function of an electric motor is to convert electrical energy to mechanical energy which then directly drives machinery such as pumps, fans, or compressors. Thus, an electric motor is always connected to a driven machine or apparatus. Typically the motor is incorporated into a finished product such as an air conditioner, a refrigerator, a machine tool, food processing equipment, or other commercial or industrial machinery. These products are commonly known as ''original equipment'' or ''end-use equipment,'' and are manufactured by firms known as ''original equipment manufacturers'' (OEMs).

Many types of motors used in original equipment are covered under EPCA. As noted above, EPCA prescribes efficiency standards to be met by all covered electric motors manufactured after October 24, 1997, except that covered motors which require listing or certification by a nationally recognized safety testing laboratory need not meet the standards until after October 24, 1999. Thus, for motors that must comply after October 24, 1997, once inventories of motors manufactured before the deadline have been exhausted, only complying motors would be available for purchase and use by OEMs in manufacturing original equipment. Any non-complying motors previously included in such equipment would no longer be available.

The physical, and sometimes operational, characteristics of motors that meet EPCA efficiency standards normally differ from the characteristics of comparable existing motors that do not meet those standards. In part because of such differences, the Department is aware of two types of situations where strict application of the October 24, 1997 deadline could temporarily prevent the manufacture of, and remove from the marketplace, currently available original equipment.

One such situation is where an original equipment manufacturer uses an electric motor as a component in end-use equipment that requires listing or certification by a nationally recognized safety testing laboratory, even though the motor itself does not require listing or certification. In some of these instances, the file for listing or certification specifies the particular motor to be used. No substitution could be made for the motor without review and approval of the new motor and the entire system by the safety testing laboratory. Consequently, a specified motor that does not meet EPCA standards could not be replaced by a complying motor without such review and approval.

This re-listing or re-certification process is subject to substantial variation from one piece of original equipment to the next. For some equipment, it could be a simple paperwork transaction between the safety listing or certification organization and the OEM, taking approximately four to eight weeks to complete. But the process could raise more complex system issues involving redesign of the motor or piece of equipment, or both, and actual testing to assure that safety and performance criteria are met, and could take several months to complete. The completion time could also vary depending on the response time of the particular safety approval agency. Moreover, in the period immediately after October 24, the Department believes wholesale changes could occur in equipment lines when OEMs must begin using motors that comply with EPCA. These changes are likely to be concentrated in the period immediately after EPCA goes into effect on October 24, and if many OEMs seek to re-list or re-certify equipment at the same time, substantial delays in the review and approval process at the safety approval agencies could occur. For these reasons, the Department is concerned that certain end-user equipment that requires safety listing or certification could become unavailable in the marketplace, because an electric motor specifically identified in a listing or certification is covered by EPCA and will become unavailable, and the steps have not been completed to obtain safety approval of the equipment when manufactured with a complying motor.

Second, a situation could exist where an electric motor covered by EPCA is constructed in a T-frame series or T-frame size that is smaller (but still standard) than that assigned by NEMA Standards Publication MG 13–1984 (R1990), sections 1.2 and 1.3, in order to fit into a restricted mounting space that is within certain end-use equipment. (Motors in IEC metric frame sizes and kilowatt ratings could also be

involved in this type of situation.) In such cases, the manufacturer of the end-use equipment might need to redesign the equipment containing the mounting space to accommodate a larger motor that complies with EPCA. These circumstances as well could result in certain currently available equipment becoming temporarily unavailable in the market, since the smaller size motor would become unavailable before the original equipment had been re-designed to accommodate the larger, complying motor.

The Department understands that many motor manufacturers and OEMs became aware only recently that the electric motors addressed in the preceding paragraphs were covered by EPCA. This is largely for the same reasons, discussed above, that EPCA coverage of Category II motors was only recently recognized. In addition, the Department understands that some motor manufacturers and original equipment manufacturers confused motors that themselves require safety listing or certification, which need not comply until October 25, 1999, with motors that, while not subject to such requirements, are included in *original equipment* that requires safety listing or certification. Consequently, motor manufacturers and original equipment manufacturers took insufficient action to assure that appropriate complying motors would be available for the original equipment involved, and that the equipment could accommodate such motors. OEMs involved in such situations may often be unable to switch to motors that meet EPCA standards in the period immediately following October 24. To mitigate any hardship to purchasers of the original equipment, the Department intends to refrain from enforcing EPCA in certain limited circumstances, under the conditions described below.

Where a particular electric motor is specified in an approved safety listing or certification for a piece of original equipment, and the motor does not meet the applicable efficiency standard in EPCA, the Department's policy will be as follows: For the period of time necessary for the OEM to obtain a revised safety listing or certification for that piece of equipment, with a motor specified that complies with EPCA, but in no event beyond October 24, 1999, the Department would refrain from taking enforcement action under EPCA with respect to manufacture of the motor for installation in such original equipment. This policy would apply only where the motor has been manufactured and specified in the approved safety listing or certification prior to October 25, 1997.

Where a particular electric motor is used in a piece of original equipment and manufactured in a smaller than assigned frame size or series, and the motor does not meet the applicable efficiency standard in EPCA, the Department's policy will be as follows: For the period of time necessary for the OEM to re-design the piece of equipment to accommodate a motor that complies with EPCA, but in no event beyond October 24, 1999, the Department would refrain from enforcing the standard with respect to manufacture of the motor for installation in such original equipment. This policy would apply only to a model of motor that has been manufactured and included in the original equipment prior to October 25, 1997.

To allow the Department to monitor application of the policy set forth in the prior two paragraphs, the Department needs to be informed as to the motors being manufactured under the policy. Therefore, each motor manufacturer and OEM should jointly notify the Department as to each motor they will be manufacturing and using, respectively, after October 24, 1997, in the belief that it is covered by the policy. The notification should set forth: (1) the name of the motor manufacturer, and a description of the motor by type, model number, and date of design or production; (2) the name of the original equipment manufacturer, and a description of the application where the motor is to be used; (3) the safety listing or safety certification organization and the existing listing or certification file or document number for which re-listing or re-certification will be requested, if applicable; (4) the reason and amount of time required for continued production of the motor, with a statement that a substitute electric motor that complies with EPCA could not be obtained by an earlier date; and (5) the name, address, and telephone number of the person to contact for further information. The joint request should be signed by a responsible official of each requesting company, and sent to: U.S. Department of Energy, Assistant Secretary for Energy Efficiency and Renewable Energy, Office of Building Research and Standards, EE–41, Forrestal Building, 1000 Independence Avenue, SW, Room 1J–018, Washington, DC 20585–0121. The Department does not intend to apply this policy to any motor for which it does not receive such a notification. Moreover, the Department may use the notification, and make further inquiries, to be sure motors listed in the notification meet the criteria for application of the policy.

This part of the Policy Statement will not apply to a motor in Category II, discussed above in section III. Because up to 24 months is contemplated for compliance by Category II motors, the Department believes any issues that might warrant a delay of enforcement for such motors can be addressed during that time period.

V. Further Information

The Department intends to incorporate this Policy Statement into an appendix to its final rule to implement the EPCA provisions that apply to motors. Any comments or suggestions with respect to this Policy Statement, as well as requests for further information, should be addressed to the Director, Office of Building Research and Standards, EE–41, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

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EXAMPLES OF MANY COMMON FEATURES OR MOTOR MODIFICATIONS TO ILLUSTRATE HOW THE EPCA DEFINITIONS AND DOE GUIDELINES WOULD BE APPLIED TO MOTOR CATEGORIES: GENERAL PURPOSE; DEFINITE PURPOSE; AND SPECIAL PURPOSE

	MOTOR MODIFICATION	CATEGORY[7]					EXPLANATION
		I	II	III	IV	V	
A.	**ELECTRICAL MODIFICATIONS**						
1	ALTITUDE	X					General purpose up to a frame series change larger.
2	AMBIENT	X					General purpose up to a frame series change larger.
3	MULTISPEED					X	EPCA applies to single speed only.
4	SPECIAL LEADS	X					
5	SPECIAL INSULATION	X					
6	ENCAPSULATION				X		Due to special construction.
7	HIGH SERVICE FACTOR	X					General purpose up to a frame series change larger.
8	SPACE HEATERS	X					
9	WYE DELTA START	X					
10	PART WINDING START	X					
11	TEMPERATURE RISE	X					General purpose up to a frame series change larger.
12	THERMALLY PROTECTED		X				Requires retesting and third party agency approval.
13	THERMOSTAT/THERMISTOR	X					
14	SPECIAL VOLTAGES					X	EPCA applies to motors operating on 230/460 voltages at 60 Hertz.
15	INTERMEDIATE HORSEPOWERS		X				Round horsepower according to 10 CFR 431.42 for efficiency.
16	FREQUENCY					X	EPCA applies to motors operating on 230/460 voltages at 60 Hertz.
17	FUNGUS/TROP INSULATION	X					

[7]Category I - General purpose electric motors as defined in EPCA.
Category II - Definite purpose electric motors that can be used in most general purpose applications as defined in EPCA.
Category III - Definite purpose motors as defined in EPCA.
Category IV - Special purpose motors as defined in EPCA.
Category V - Outside the scope of "electric motor" as defined in EPCA.

B. MECHANICAL MODIFICATIONS							
18	SPECIAL BALANCE	X					
19	BEARING TEMP. DETECTOR	X					
20	SPECIAL BASE/FEET					X	Does not meet definition of T-frame
21	SPECIAL CONDUIT BOX	X					
22	AUXILIARY CONDUIT BOX	X					
23	SPECIAL PAINT/COATING	X					
24	DRAINS	X					
25	DRIP COVER	X					
26	GROUND. LUG/HOLE	X					
27	SCREENS ON ODP ENCLOSURE	X					
28	MOUNTING F1,F2; W1-4; C1,2	X					Foot-mounting, rigid base, and resilient base.
C. BEARINGS							
29	BEARING CAPS	X					
30	ROLLER BEARINGS		X				Test with a standard bearing.
31	SHIELDED BEARINGS	X					
32	SEALED BEARINGS	X					Test with a standard bearing.
33	THRUST BEARINGS				X		Special mechanical construction.
34	CLAMPED BEARINGS	X					
35	SLEEVE BEARINGS				X		Special mechanical construction.
D. SPECIAL ENDSHIELDS							
36	C FACE	X					As defined in NEMA MG-1.
37	D FLANGE	X					As defined in NEMA MG-1.
38	CUSTOMER DEFINED				X		Special design for a particular application.
E. SEALS							
39	CONTACT SEALS	X					Includes lip seals and taconite seals - test with seals removed.
40	NON-CONTACT SEAL	X					Includes labyrinth and slinger seals - test with seals installed.

F. SHAFTS							
41	STANDARD SHAFTS/NEMA MG-1	X					Includes single and double, cylindrical, tapered, and short shafts.
42	NON STANDARD MATERIAL	X					
G. FANS							
43	SPECIAL MATERIAL	X					
44	QUIET DESIGN	X					
H. OTHER MOTORS							
45	WASHDOWN	X					Test with seals removed.
46	CLOSE- COUPLED PUMP			X			JM and JP frame assignments.
47	INTEGRAL GEAR MOTOR					X	Typically special mechanical design, and not a T-frame; motor and gearbox inseparable and operate as one system .
48	VERTICAL - NORMAL THRUST					X	EPCA covers foot-mounting.
49	SAW ARBOR				X		Special electrical/mechanical design.
50	TENV			X			Totally-enclosed non-ventilated not equipped for cooling (IP54, IC410).
51	TEAO			X			Totally-enclosed air-over requires airflow from external source (IP54, IC417).
52	FIRE PUMP	X					When safety certification is not required. See also EPCA §342(b)(1).
53	NON-CONTINUOUS					X	EPCA covers continuous ratings.
54	INTEGRAL BRAKE MOTOR				X		Integral brake design factory built within the motor.

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Subpart B—Test Procedures and Materials Incorporated

§ 431.21 Purpose and scope.

This subpart contains test procedures for electric motors, required to be prescribed by DOE pursuant to section 343 of EPCA, 42 U.S.C. 6314, and identifies materials incorporated by reference in this Part.

§ 431.22 Reference sources.

(a) *Materials incorporated by reference.*

(1) *General.* The following standards which are not otherwise set forth in this part 431 are incorporated by reference. The material listed in paragraph (a)(2) of this section has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE test procedures unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**.

(2) *List of standards incorporated by reference.*

(i) The following provisions of National Electrical Manufacturers Association Standards Publication MG1–1993, *Motors and Generators,* with Revisions 1, 2, 3 and 4:

(A) Section I, *General Standards Applying to All Machines,* Part 1, *Referenced Standards and Definitions,* paragraphs 1.16.1, 1.16.1.1, 1.17.1.1, 1.17.1.2, and 1.40.1;

(B) Section I, *General Standards Applying to All Machines,* Part 4, *Dimensions, Tolerances, and Mounting,* paragraph 4.01 and Figures 4–1, 4–2, 4–3, and 4–4;

(C) Section II, *Small (Fractional) and Medium (Integral) Machines,* Part 11, *Dimensions-AC and DC Small and Medium Machines,* paragraphs 11.01.2, 11.31 (except the lines for frames 447T, 447TS, 449T and 449TS), 11.32, 11.34 (except the line for frames 447TC and 449TC, and the line for frames 447TSC and 449TSC), 11.35, and 11.36 (except the line for frames 447TD and 449TD, and the line for frames 447TSD and 449TSD), and Table 11–1;

(D) Section II, *Small (Fractional) and Medium (Integral) Machines,* Part 12, *Tests and Performance-AC and DC Motors,* paragraphs 12.35.1, 12.35.5, 12.38.1, 12.39.1, and 12.40.1, 12.58.1, and Tables 12–2 and 12–8; and

(E) Section II, *Small (Fractional) and Medium (Integral) Machines,* Part 14, *Application Data-AC and DC Small and Medium Machines,* paragraphs 14.02 and 14.03.

(ii) Institute of Electrical and Electronics Engineers, Inc., Standard 112–1996, *Test Procedure for Polyphase Induction Motors and Generators,* Test Method B, and the correction to the calculation at item (28) in section 10.2 Form B-Test Method B issued by IEEE on January 20, 1998. (Note: Paragraph 2 of Appendix A to Subpart B of Part 431 sets forth modifications to this Standard when it is used for purposes of Part 431 and EPCA.)

(iii) CSA International Standard C390–93, *Energy Efficiency Test Methods for Three-Phase Induction Motors,* Test Method (1).

(iv) International Electrotechnical Commission Standard 60034–1 (1996), *Rotating electrical machines,* Part 1: *Rating and performance,* with Amendment 1 (1997), Section 3: Duty, clause 3.2.1 and figure 1.

(v) International Electrotechnical Commission Standard 60050–411 (1996), *International Electrotechnical Vocabulary Chapter 411: Rotating machines,* sections 411–33–07 and 411–37–26.

(vi) International Electrotechnical Commission Standard 60072–1 (1991), *Dimensions and output series for rotating electrical machines—Part 1: Frame numbers 56 to 400 and flange numbers 55 to 1080,* clauses 2, 3, 4.1, 6.1, 7, and 10, and Tables 1, 2 and 4.

(vii) International Electrotechnical Commission Standard 60034–12 (1980), *Rotating electrical machines, Part 12: Starting performance of single-speed three-phase cage induction motors for voltages up to and including 660 V,* with Amendment 1 (1992) and Amendment 2 (1995), clauses 1, 2, 3.1, 4, 5, and 6, and Tables I, II, and III.

(3) *Inspection of standards.* The standards incorporated by reference are available for inspection at:

(i) Office of the Federal Register Information Center, 800 North Capitol Street, NW, Suite 700, Washington, DC;

(ii) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, ''Test Procedures, Labeling, and Certification Requirements for Electric Motors,'' Docket No. EE–RM–96–400, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC.

(4) *Availability of standards.* Standards incorporated by reference may be obtained from the following sources:

(i) Copies of IEEE Standard 112–1996 can be obtained from the Institute of Electrical and Electronics Engineers, Inc., 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, 1–800–678–IEEE;

(ii) Copies of NEMA Standards Publication MG1–1993 with Revisions 1, 2, 3, and 4, and copies of International Electrotechnical Commission standards can be obtained from Global Engineering Documents, 15 Inverness Way East, Englewood, Colorado 80112–5776, 1–800–854–7179 (within the U.S.) or (303) 397–7956 (international).

(iii) Copies of CSA International Standard C390–93 can be obtained from CSA International, 178 Rexdale Boulevard, Etobicoke (Toronto), Ontario, Canada M9W 1R3, (416) 747–4044;

(b) *Reference Standards.*—(1) *General.* The standards listed in this paragraph are referred to in the DOE procedures for testing laboratories, and recognition of accreditation bodies and certification programs but are not incorporated by reference. These sources are given here for information and guidance.

(2) *List of References.*

(i) National Voluntary Laboratory Accreditation Program Handbooks 150, ''Procedures and General Requirements,'' March 1994, and 150–10, ''Efficiency of Electric Motors,'' August 1995. National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, Gaithersburg, MD 20899.

(ii) ISO/IEC Guide 25, ''General requirements for the competence of calibration and testing laboratories.''

(iii) ISO Guide 27, ''Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk.''

(iv) ISO/IEC Guide 28, ''General rules for a model third-party certification system for products.''

(v) ISO/IEC Guide 58, ''Calibration and testing laboratory accreditation systems—General requirements for operation and recognition.''

(vi) ISO/IEC Guide 65, ''General requirements for bodies operating product certification systems.''

§ 431.23 Test procedures for the measurement of energy efficiency.

For purposes of 10 CFR Part 431 and EPCA, the test procedures for measuring the energy efficiency of an electric motor shall be the test procedures specified in appendix A to this subpart B.

§ 431.24 Determination of efficiency.

When a party determines the energy efficiency of an electric motor in order

to comply with an obligation imposed on it by or pursuant to Part C of Title III of EPCA, 42 U.S.C. 6311-6316, this section applies. This section does not apply to enforcement testing conducted pursuant to § 431.127.

(a) *Provisions applicable to all electric motors.*

(1) *General Requirements.* The average full load efficiency of each basic model of electric motor must be determined either by testing in accordance with § 431.23 of this subpart, or by application of an alternative efficiency determination method (AEDM) that meets the requirements of paragraphs (a)(2) and (3) of this section, provided, however, that an AEDM may be used to determine the average full load efficiency of one or more of a manufacturer's basic models only if the average full load efficiency of at least five of its other basic models is determined through testing.

(2) *Alternative efficiency determination method.* An AEDM applied to a basic model must be:

(i) Derived from a mathematical model that represents the mechanical and electrical characteristics of that basic model, and

(ii) Based on engineering or statistical analysis, computer simulation or modeling, or other analytic evaluation of performance data.

(3) *Substantiation of an alternative efficiency determination method.* Before an AEDM is used, its accuracy and reliability must be substantiated as follows:

(i) The AEDM must be applied to at least five basic models that have been tested in accordance with § 431.23 of this subpart, and

(ii) The predicted total power loss for each such basic model, calculated by applying the AEDM, must be within plus or minus ten percent of the mean total power loss determined from the testing of that basic model.

(4) *Subsequent verification of an AEDM.*

(i) Each manufacturer shall periodically select basic models representative of those to which it has applied an AEDM, and for each basic model selected shall either:

(A) Subject a sample of units to testing in accordance with §§ 431.23 and 431.24(b)(2) by an accredited laboratory that meets the requirements of § 431.25,

(B) Have a certification body recognized under § 431.27 certify its nominal full load efficiency, or

(C) Have an independent state-registered professional engineer, who is qualified to perform an evaluation of electric motor efficiency in a highly competent manner and who is not an employee of the manufacturer, review the manufacturer's representations and certify that the results of the AEDM accurately represent the total power loss and nominal full load efficiency of the basic model.

(ii) Each manufacturer that has used an AEDM under this section shall have available for inspection by the Department of Energy records showing: the method or methods used; the mathematical model, the engineering or statistical analysis, computer simulation or modeling, and other analytic evaluation of performance data on which the AEDM is based; complete test data, product information, and related information that the manufacturer has generated or acquired pursuant to §§ 431.24(a)(3) and (a)(4)(i); and the calculations used to determine the average full load efficiency and total power losses of each basic model to which the AEDM was applied.

(iii) If requested by the Department, the manufacturer shall conduct simulations to predict the performance of particular basic models of electric motors specified by the Department, analyses of previous simulations conducted by the manufacturer, sample testing of basic models selected by the Department, or a combination of the foregoing.

(5) *Use of a certification program or accredited laboratory.*

(i) A manufacturer may have a certification program, that DOE has classified as nationally recognized under § 431.27, certify the nominal full load efficiency of a basic model of electric motor, and issue a certificate of conformity for the motor.

(ii) For each basic model for which a certification program is not used as described in paragraph (a)(5)(i) of this section, any testing of the motor pursuant to § 431.24(a)(1) through (3) to determine its energy efficiency must be carried out in accordance with § 431.24(b), in an accredited laboratory that meets the requirements of § 431.25. (This includes testing of the basic model, pursuant to § 431.24(a)(3)(i), to substantiate an AEDM.)

(b) *Additional testing requirements applicable when a certification program is not used.*

(1) *Selection of basic models for testing.*

(i) Basic models must be selected for testing in accordance with the following criteria:

(A) Two of the basic models must be among the five basic models with the highest unit volumes of production by the manufacturer in the prior year, or during the prior 12 calendar month period beginning in 1997,[1] whichever is later;

(B) The basic models should be of different horsepowers without duplication;

(C) The basic models should be of different frame number series without duplication; and

(D) Each basic model should be expected to have the lowest nominal full load efficiency among the basic models with the same rating (''rating'' as used here has the same meaning as it has in the definition of ''basic model'').

(ii) In any instance where it is impossible for a manufacturer to select basic models for testing in accordance with all of these criteria, the criteria shall be given priority in the order in which they are listed. Within the limits imposed by the criteria, basic models shall be selected randomly.

(2) *Selection of units for testing.* For each basic model selected for testing,[2] a sample of units shall be selected at random and tested. The sample shall be comprised of production units of the basic model, or units that are representative of such production units. The sample size shall be not fewer than five units, except that when fewer than five units of a basic model would be produced over a reasonable period of time (approximately 180 days), then each unit shall be tested. In a test of compliance with a represented average or nominal efficiency:

(i) The average full-load efficiency of the sample $\bar{X}$ which is defined by

$$\bar{X} = \frac{1}{n}\sum_{i=1}^{n} X_i,$$

where X_i is the measured full-load efficiency of unit i and n is the number of units tested, shall satisfy the condition:

$$\bar{X} \geq \frac{100}{1 + 1.05\left(\frac{100}{RE} - 1\right)}$$

where RE is the represented nominal full-load efficiency, and

(ii) The lowest full-load efficiency in the sample X_{min}, which is defined by

$$X_{min} = \min(X_i)$$

shall satisfy the condition

[1] In identifying these five basic models, any electric motor that does not comply with § 431.42, shall be excluded from consideration.

[2] Components of similar design may be substituted without requiring additional testing if the represented measures of energy consumption continue to satisfy the applicable sampling provision.

$$X_{min} \geq \frac{100}{1 + 1.15\left(\frac{100}{RE} - 1\right)}$$

(3) *Substantiation of an alternative efficiency determination method.* The basic models tested under § 431.24(a)(3)(i) must be selected for testing in accordance with paragraph (b)(1), and units of each such basic model must be tested in accordance with paragraph (b)(2) by an accredited laboratory that meets the requirements of § 431.25.

§ 431.25 Testing laboratories.

(a) Testing pursuant to § 431.24(a)(5)(ii) must be conducted in an accredited laboratory for which the accreditation body was:

(1) The National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program (NIST/NVLAP), or

(2) A laboratory accreditation body having a mutual recognition arrangement with NIST/NVLAP, or

(3) An organization classified by the Department, pursuant to section 431.26, as an accreditation body.

(b) NIST/NVLAP is under the auspices of the National Institute of Standards and Technology (NIST) which is part of the U.S. Department of Commerce. NIST/NVLAP accreditation is granted on the basis of conformance with criteria published in 15 CFR Part 285, *The National Voluntary Laboratory Accreditation Program Procedures and General Requirements.* NIST Handbook 150–10, August 1995, presents the technical requirements of the National Voluntary Laboratory Accreditation Program for the Efficiency of Electric Motors field of accreditation. This handbook supplements NIST Handbook 150, *National Voluntary Laboratory Accreditation Program Procedures and General Requirements,* which contains 15 CFR Part 285 of the U.S. Code of Federal Regulations plus all general NIST/NVLAP procedures, criteria, and policies. Changes in NIST/NVLAP's criteria, procedures, policies, standards or other bases for granting accreditation, occurring subsequent to the initial effective date of 10 CFR part 431 shall not apply to accreditation under this part unless approved in writing by the Department of Energy. Copies of NIST Handbooks 150 and 150–10 and information regarding NIST/NVLAP and its Efficiency of Electric Motors Program (EEM) can be obtained from NIST/NVLAP, 100 Bureau Drive, Mail Stop 2140, Gaithersburg, MD 20899–2140, telephone (301) 975–4016, or telefax (301) 926–2884.

§ 431.26 Department of Energy recognition of accreditation bodies.

(a) *Petition.* To be classified by the Department of Energy as an accreditation body, an organization must submit a petition to the Department requesting such classification, in accordance with paragraph (c) of this section and § 431.28 of this part. The petition must demonstrate that the organization meets the criteria in paragraph (b) of this section.

(b) *Evaluation criteria.* To be classified as an accreditation body by the Department, the organization must meet the following criteria:

(1) It must have satisfactory standards and procedures for conducting and administering an accreditation system and for granting accreditation. This must include provisions for periodic audits to verify that the laboratories receiving its accreditation continue to conform to the criteria by which they were initially accredited, and for withdrawal of accreditation where such conformance does not occur, including failure to provide accurate test results.

(2) It must be independent of electric motor manufacturers, importers, distributors, private labelers or vendors. It cannot be affiliated with, have financial ties with, be controlled by, or be under common control with any such entity.

(3) It must be qualified to perform the accrediting function in a highly competent manner.

(4) It must be expert in the content and application of the test procedures and methodologies in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1), or similar procedures and methodologies for determining the energy efficiency of electric motors.

(c) *Petition format.* Each petition requesting classification as an accreditation body must contain a narrative statement as to why the organization meets the criteria set forth in paragraph (b) of this section, must be signed on behalf of the organization by an authorized representative, and must be accompanied by documentation that supports the narrative statement. The following provides additional guidance:

(1) *Standards and procedures.* A copy of the organization's standards and procedures for operating an accreditation system and for granting accreditation should accompany the petition.

(2) *Independent status.* The petitioning organization should identify and describe any relationship, direct or indirect, that it has with an electric motor manufacturer, importer, distributor, private labeler, vendor, trade association or other such entity, as well as any other relationship it believes might appear to create a conflict of interest for it in performing as an accreditation body for electric motor testing laboratories. It should explain why it believes such relationship(s) would not compromise its independence as an accreditation body.

(3) *Qualifications to do accrediting.* Experience in accrediting should be discussed and substantiated by supporting documents. Of particular relevance would be documentary evidence that establishes experience in the application of guidelines contained in the ISO/IEC Guide 58, *Calibration and testing laboratory accreditation systems—General requirements for operation and recognition,* as well as experience in overseeing compliance with the guidelines contained in the ISO/IEC Guide 25, *General Requirements for the Competence of Calibration and Testing Laboratories.*

(4) *Expertise in electric motor test procedures.* The petition should set forth the organization's experience with the test procedures and methodologies in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1), and with similar procedures and methodologies. This part of the petition should include description of prior projects, qualifications of staff members, and the like. Of particular relevance would be documentary evidence that establishes experience in applying the guidelines contained in the ISO/IEC Guide 25, *General Requirements for the Competence of Calibration and Testing Laboratories,* to energy efficiency testing for electric motors.

(d) *Disposition.* The Department will evaluate the petition in accordance with section 431.28, and will determine whether the applicant meets the criteria in paragraph (b) of this section to be classified as an accrediting body.

§ 431.27 Department of Energy recognition of nationally recognized certification programs.

(a) *Petition.* For a certification program to be classified by the Department of Energy as being nationally recognized in the United States for the purposes of section 345 of EPCA (''nationally recognized''), the organization operating the program must submit a petition to the Department requesting such classification, in accordance with paragraph (c) of this section and section 431.28 of this part. The petition must demonstrate that the program meets the criteria in paragraph (b) of this section.

(b) *Evaluation criteria.* For a certification program to be classified by the Department as nationally recognized, it must meet the following criteria:

(1) It must have satisfactory standards and procedures for conducting and administering a certification system, including periodic follow up activities to assure that basic models of electric motor continue to conform to the efficiency levels for which they were certified, and for granting a certificate of conformity.

(2) It must be independent of electric motor manufacturers, importers, distributors, private labelers or vendors. It cannot be affiliated with, have financial ties with, be controlled by, or be under common control with any such entity.

(3) It must be qualified to operate a certification system in a highly competent manner.

(4) It must be expert in the content and application of the test procedures and methodologies in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1), or similar procedures and methodologies for determining the energy efficiency of electric motors. It must have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency.

(c) *Petition format.* Each petition requesting classification as a nationally recognized certification program must contain a narrative statement as to why the program meets the criteria listed in paragraph (b) of this section, must be signed on behalf of the organization operating the program by an authorized representative, and must be accompanied by documentation that supports the narrative statement. The following provides additional guidance as to the specific criteria:

(1) *Standards and procedures.* A copy of the standards and procedures for operating a certification system and for granting a certificate of conformity should accompany the petition.

(2) *Independent status.* The petitioning organization should identify and describe any relationship, direct or indirect, that it or the certification program has with an electric motor manufacturer, importer, distributor, private labeler, vendor, trade association or other such entity, as well as any other relationship it believes might appear to create a conflict of interest for the certification program in operating a certification system for compliance by electric motors with energy efficiency standards. It should explain why it believes such relationship would not compromise its independence in operating a certification program.

(3) *Qualifications to operate a certification system.* Experience in operating a certification system should be discussed and substantiated by supporting documents. Of particular relevance would be documentary evidence that establishes experience in the application of guidelines contained in the ISO/IEC Guide 65, *General requirements for bodies operating product certification systems,* ISO/IEC Guide 27, *Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk,* and ISO/IEC Guide 28, *General rules for a model third-party certification system for products,* as well as experience in overseeing compliance with the guidelines contained in the ISO/IEC Guide 25, *General requirements for the competence of calibration and testing laboratories.*

(4) *Expertise in electric motor test procedures.* The petition should set forth the program's experience with the test procedures and methodologies in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1), and with similar procedures and methodologies. This part of the petition should include description of prior projects, qualifications of staff members, and the like. Of particular relevance would be documentary evidence that establishes experience in applying guidelines contained in the ISO/IEC Guide 25, *General requirements for the competence of calibration and testing laboratories,* to energy efficiency testing for electric motors.

(d) *Disposition.* The Department will evaluate the petition in accordance with § 431.28, and will determine whether the applicant meets the criteria in paragraph (b) of this section for classification as a nationally recognized certification program.

§ 431.28 Procedures for recognition and withdrawal of recognition of accreditation bodies and certification programs.

(a) *Filing of petition.* Any petition submitted to the Department pursuant to § 431.26(a) or 431.27(a) of this part, shall be entitled ''Petition for Recognition'' (''Petition'') and must be submitted, in triplicate to the Assistant Secretary for Energy Efficiency and Renewable Energy, United States Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. In accordance with the provisions set forth in 10 CFR 1004.11, any request for confidential treatment of any information contained in such a Petition or in supporting documentation must be accompanied by a copy of the Petition or supporting documentation from which the information claimed to be confidential has been deleted.

(b) *Public notice and solicitation of comments.* DOE shall publish in the **Federal Register** the Petition from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11 and shall solicit comments, data and information on whether the Petition should be granted. The Department shall also make available for inspection and copying the Petition's supporting documentation from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11. Any person submitting written comments to DOE with respect to a Petition shall also send a copy of such comments to the petitioner.

(c) *Responsive statement by the petitioner.* A petitioner may, within 10 working days of receipt of a copy of any comments submitted in accordance with paragraph (b) of this section, respond to such comments in a written statement submitted to the Assistant Secretary for Energy Efficiency and Renewable Energy. A petitioner may address more than one set of comments in a single responsive statement.

(d) *Public announcement of interim determination and solicitation of comments.* The Assistant Secretary for Energy Efficiency and Renewable Energy shall issue an interim determination on the Petition as soon as is practicable following receipt and review of the Petition and other applicable documents, including, but not limited to, comments and responses to comments. The petitioner shall be notified in writing of the interim determination. DOE shall also publish in the **Federal Register** the interim determination and shall solicit comments, data and information with respect to that interim determination. Written comments and responsive statements may be submitted as provided in paragraphs (b) and (c) of this section.

(e) *Public announcement of final determination.* The Assistant Secretary for Energy Efficiency and Renewable Energy shall as soon as practicable, following receipt and review of comments and responsive statements on the interim determination, publish in the **Federal Register** a notice of final determination on the Petition.

(f) *Additional information.* The Department may, at any time during the

recognition process, request additional relevant information or conduct an investigation concerning the Petition. The Department's determination on a Petition may be based solely on the Petition and supporting documents, or may also be based on such additional information as the Department deems appropriate.

(g) *Withdrawal of recognition.*

(1) *Withdrawal by the Department.* If the Department believes that an accreditation body or certification program that has been recognized under § 431.26 or 431.27, respectively, is failing to meet the criteria of paragraph (b) of the section under which it is recognized, the Department will so advise such entity and request that it take appropriate corrective action. The Department will give the entity an opportunity to respond. If after receiving such response, or no response, the Department believes satisfactory correction has not been made, the Department will withdraw its recognition from that entity.

(2) *Voluntary withdrawal.* An accreditation body or certification program may withdraw itself from recognition by the Department by advising the Department in writing of such withdrawal. It must also advise those that use it (for an accreditation body, the testing laboratories, and for a certification organization, the manufacturers) of such withdrawal.

(3) *Notice of withdrawal of recognition.* The Department will publish in the **Federal Register** a notice of any withdrawal of recognition that occurs pursuant to this paragraph (g).

§ 431.29 Petitions for waiver, and applications for interim waiver, of test procedure.

(a) *General criteria.*

(1) Any interested person may submit a petition to waive for a particular basic model any requirements of § 431.23 of this subpart, upon the grounds that either the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

(2) Any interested person who has submitted a Petition for Waiver as provided in this subpart may also file an Application for Interim Waiver of the applicable test procedure requirements.

(b) *Submission, content, and publication.*

(1) A Petition for Waiver must be submitted, in triplicate, to the Assistant Secretary for Energy Efficiency and Renewable Energy, United States Department of Energy. Each Petition for Waiver shall:

(i) Identify the particular basic model(s) for which a waiver is requested, the design characteristic(s) constituting the grounds for the petition, and the specific requirements sought to be waived and shall discuss in detail the need for the requested waiver;

(ii) Identify manufacturers of all other basic models marketed in the United States and known to the petitioner to incorporate similar design characteristic(s);

(iii) Include any alternate test procedures known to the petitioner to evaluate in a manner representative of the energy consumption characteristics of the basic model; and

(iv) Be signed by the petitioner or by an authorized representative. In accordance with the provisions set forth in 10 CFR 1004.11, any request for confidential treatment of any information contained in a Petition for Waiver or in supporting documentation must be accompanied by a copy of the petition, application or supporting documentation from which the information claimed to be confidential has been deleted. DOE shall publish in the **Federal Register** the petition and supporting documents from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11 and shall solicit comments, data and information with respect to the determination of the petition.

(2) An Application for Interim Waiver must be submitted in triplicate, with the required three copies of the Petition for Waiver, to the Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy. Each Application for Interim Waiver shall reference the Petition for Waiver by identifying the particular basic model(s) for which a waiver and temporary exception are being sought. Each Application for Interim Waiver shall demonstrate likely success of the Petition for Waiver and shall address what economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver. Each Application for Interim Waiver shall be signed by the applicant or by an authorized representative.

(c) *Notification to other manufacturers.*

(1) Each petitioner, after filing a Petition for Waiver with DOE, and after the Petition for Waiver has been published in the **Federal Register**, must, within five working days of such publication, notify in writing all known manufacturers of domestically marketed units of the same product type (as listed in section 340(1) of the Act) and must include in the notice a statement that DOE has published in the **Federal Register** on a certain date the Petition for Waiver and supporting documents from which confidential information, if any, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11. Each petitioner, in complying with the requirements of this paragraph, must file with DOE a statement certifying the names and addresses of each person to whom a notice of the Petition for Waiver has been sent.

(2) Each applicant for Interim Waiver, whether filing jointly with, or subsequent to, a Petition for Waiver with DOE, must concurrently notify in writing all known manufacturers of domestically marketed units of the same product type (as listed in Section 340(1) of the Act) and must include in the notice a copy of the Petition for Waiver and a copy of the Application for Interim Waiver. In complying with this section, each applicant must in the written notification include a statement that the Assistant Secretary for Energy Efficiency and Renewable Energy will receive and consider timely written comments on the Application for Interim Waiver. Each applicant, upon filing an Application for Interim Waiver, must in complying with the requirements of this paragraph certify to DOE that a copy of these documents have been sent to all known manufacturers of domestically marked units of the same product type (as listed in section 340(1) of the Act). Such certification must include the names and addresses of such persons. Each applicant also must comply with the provisions of paragraph (c)(1) of this section with respect to the petition for waiver.

(d) *Comments; responses to comments.*

(1) Any person submitting written comments to DOE with respect to an Application for Interim Waiver must also send a copy of the comments to the applicant.

(2) Any person submitting written comments to DOE with the respect to a Petition for Waiver must also send a copy of such comments to the petitioner. In accordance with subparagraph (b)(1) of this section, a petitioner may submit a rebuttal statement to the Assistant Secretary for Energy Efficiency and Renewable Energy.

(e) *Provisions specific to interim waivers.*

(1) *Disposition of application.* If administratively feasible, applicant will be notified in writing of the disposition of the Application for Interim Waiver within 15 business days of receipt of the application. Notice of DOE's determination on the Application for Interim Waiver must be published in the **Federal Register**.

(2) *Consequences of filing application.* The filing of an Application for Interim Waiver shall not constitute grounds for noncompliance with any requirements of this subpart, until an Interim Waiver has been granted.

(3) *Criteria for granting.* An Interim Waiver from test procedure requirements will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver.

(4) *Duration.* An interim waiver will terminate 180 days after issuance or upon the determination on the Petition for Waiver, whichever occurs first. An interim waiver may be extended by DOE for 180 days. Notice of such extension and/or any modification of the terms or duration of the interim waiver shall be published in the **Federal Register**, and shall be based on relevant information contained in the record and any comments received subsequent to issuance of the interim waiver.

(f) *Provisions specific to waivers.*—(1) *Rebuttal by petitioner.* Following publication of the Petition for Waiver in the **Federal Register**, a petitioner may, within 10 working days of receipt of a copy of any comments submitted in accordance with paragraph (b)(1) of this section, submit a rebuttal statement to the Assistant Secretary for Energy Efficiency and Renewable Energy. A petitioner may rebut more than one response in a single rebuttal statement.

(2) *Disposition of petition.* The petitioner will be notified in writing as soon as practicable of the disposition of each Petition for Waiver. The Assistant Secretary for Energy Efficiency and Renewable Energy will issue a decision on the petition as soon as is practicable following receipt and review of the Petition for Waiver and other applicable documents, including, but not limited to, comments and rebuttal statements.

(3) *Consequence of filing petition.* The filing of a Petition for Waiver will not constitute grounds for noncompliance with any requirements of this subpart, until a waiver or interim waiver has been granted.

(4) *Granting of waivers: criteria, conditions, and publication.* Waivers will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy, if it is determined that the basic model for which the waiver was requested contains a design characteristic which either prevents testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. Waivers may be granted subject to conditions, which may include adherence to alternate test procedures specified by the Assistant Secretary for Energy Efficiency and Renewable Energy. The Assistant Secretary will promptly publish in the **Federal Register** notice of each waiver granted or denied, and any limiting conditions of each waiver granted.

(g) *Revision of regulation.* Within one year of the granting of any waiver, the Department of Energy will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, the Department of Energy will publish in the **Federal Register** a final rule. Such waiver will terminate on the effective date of such final rule.

(h) *Exhaustion of remedies.* In order to exhaust administrative remedies, any person aggrieved by an action under this section must file an appeal with the DOE's Office of Hearings and Appeals as provided in 10 CFR Part 1003, subpart C.

Appendix A to Subpart B of Part 431—Uniform Test Method for Measuring Nominal Full Load Efficiency of Electric Motors

1. *Definitions.*

Definitions contained in section 431.2 are applicable to this appendix.

2. *Test procedures.*

Efficiency and losses shall be determined in accordance with NEMA MG1–1993 with Revisions 1 through 4, paragraph 12.58.1, ''Determination of Motor Efficiency and Losses,'' and either

(1) CSA International (or Canadian Standards Association) Standard C390–93 Test Method (1), *Input-Output Method with Indirect Measurement of the Stray-Load Loss and Direct Measurement of the Stator Winding* (I^2R), *Rotor Winding* (I^2R), *Core and Windage-Friction Losses,* or

(2) IEEE Standard 112–1996 Test Method B, *Input-Output with Loss Segregation,* with IEEE correction notice of January 20, 1998, except as follows:

(i) Page 8, subclause 5.1.1, *Specified temperature,* the introductory clause does not apply. Instead the following applies:

The specified temperature used in making resistance corrections should be determined by one of the following (Test Method B only allows the use of preference a) or b).), which are listed in order of preference.

(ii) Page 17, subclause 6.4.1.3, *No-load test,* the text does not apply. Instead, the following applies:

See 5.3 including 5.3.3, the separation of core loss from friction and windage loss. Prior to making this test, the machine shall be operated at no-load until the input has stabilized.

(iii) Page 40, subclause 8.6.3, *Termination of test,* the third sentence does not apply. Instead, the following applies:

For continuous rated machines, the temperature test shall continue until there is 1°C or less change in temperature rise over a 30-minute time period.

(iv) Page 47, at the top of 10.2 Form B, immediately after the line that reads ''Rated Load Heat Run Stator Winding Resistance Between Terminals,'' the following additional line applies:

Temperature for Resistance Correction (t_s) =_____ °C (See 6.4.3.2).

(v) Page 47, at the bottom of 10.2 Form B, after the first sentence to footnote t_t, the following additional sentence applies:

The values for t_s and t_t shall be based on the same method of temperature measurement, selected from the four methods in subclause 8.3.

(vi) Page 47, at the bottom of 10.2 Form B, below the footnotes and above ''Summary of Characteristics,'' the following additional note applies:

Note: The temperature for resistance correction (t_s) is equal to [(4) − (5) + 25°C].

(vii) Page 48, item (22), the torque constants ''k = 9.549 for torque, in N•m'' and ''k = 7.043 for torque, in lbf•ft'' do not apply. Instead, the following applies:

''k_2 = 9.549 for torque, in N•m'' and ''k_2 = 7.043 for torque, in lbf•ft.''

(viii) Page 48, at the end of item (27), the following additional reference applies:

''See 6.4.3.2''.

(ix) Page 48, item (29), ''See 4.3.2.2, Eq. 4,'' does not apply. Instead the following applies:

Is equal to (10) • [k_1 + (4) − (5) + 25°C] / [k_1 + (7)], see 6.4.3.3''.

3. *Amendments to test procedures.*

Any revision to IEEE Std 112–1996 Test Method B with correction notice of January 20, 1998, to NEMA Standards Publication MG1–1993 with Revisions 1 through 4, or to CSA Standard C390–93 Test Method (1), subsequent to promulgation of this appendix A, shall not be effective for purposes of test procedures required under part 431 and this appendix A, unless and until part 431 and this appendix A are amended.

Subpart C—Energy Conservation Standards

§ 431.41 Purpose and scope.

This subpart contains energy conservation standards for certain types of covered equipment pursuant to Part C–Certain Industrial Equipment, Energy Policy and Conservation Act, as amended (42 U.S.C. 6211 *et seq.*).

§ 431.42 Energy conservation standards and effective dates.

(a) Each electric motor manufactured (alone or as a component of another piece of equipment) after October 24, 1997, or in the case of an electric motor which requires listing or certification by a nationally recognized safety testing laboratory, after October 24, 1999, shall have a nominal full load efficiency of not less than the following:

Number of poles	Nominal Full Load Efficiency					
	Open Motors			Enclosed Motors		
	6	4	2	6	4	2
Motor Horsepower/Standard Kilowatt Equivalent						
1/.75	80.0	82.5	.....	80.0	82.5	75.5
1.5/1.1	84.0	84.0	82.5	85.5	84.0	82.5
2/1.5	85.5	84.0	84.0	86.5	84.0	84.0
3/2.2	86.5	86.5	84.0	87.5	87.5	85.5
5/3.7	87.5	87.5	85.5	87.5	87.5	87.5
7.5/5.5	88.5	88.5	87.5	89.5	89.5	88.5
10/7.5	90.2	89.5	88.5	89.5	89.5	89.5
15/11	90.2	91.0	89.5	90.2	91.0	90.2
20/15	91.0	91.0	90.2	90.2	91.0	90.2
25/18.5	91.7	91.7	91.0	91.7	92.4	91.0
30/22	92.4	92.4	91.0	91.7	92.4	91.0
40/30	93.0	93.0	91.7	93.0	93.0	91.7
50/37	93.0	93.0	92.4	93.0	93.0	92.4
60/45	93.6	93.6	93.0	93.6	93.6	93.0
75/55	93.6	94.1	93.0	93.6	94.1	93.0
100/75	94.1	94.1	93.0	94.1	94.5	93.6
125/90	94.1	94.5	93.6	94.1	94.5	94.5
150/110	94.5	95.0	93.6	95.0	95.0	94.5
200/150	94.5	95.0	94.5	95.0	95.0	95.0

(b) For purposes of determining the required minimum nominal full load efficiency of an electric motor that has a horsepower or kilowatt rating between two horsepowers or kilowattages listed consecutively in paragraph (a) of this section, each such motor shall be deemed to have a horsepower or kilowatt rating that is listed in paragraph (a). The rating that the motor is deemed to have shall be determined as follows:

(1) A horsepower at or above the midpoint between the two consecutive horsepowers shall be rounded up to the higher of the two horsepowers;

(2) A horsepower below the midpoint between the two consecutive horsepowers shall be rounded down to the lower of the two horsepowers, or

(3) A kilowatt rating shall be directly converted from kilowatts to horsepower using the formula, 1 kilowatt = (1/0.746) horsepower, without calculating beyond three significant decimal places, and the resulting horsepower shall be rounded in accordance with subparagraph (b)(1) or (b)(2) of this section, whichever applies.

(c) This section does not apply to definite purpose motors, special purpose motors, and those motors exempted by the Secretary.

§ 431.43 Preemption of state regulations.

Any state regulation providing for any energy conservation standard, or other requirement with respect to the energy efficiency or energy use, of an electric motor that is not identical to a Federal standard in effect under this subpart is preempted by that standard, except as provided for in sections 345(a) and 327(b) and (c) of the Act.

Subpart D—Petitions To Exempt State Regulation From Preemption; Petitions To Withdraw Exemption of State Regulation

§ 431.61 Purpose and scope.

(a) The regulations in this subpart prescribe the procedures to be followed in connection with petitions requesting a rule that a State regulation prescribing an energy conservation standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered equipment not be preempted.

(b) The regulations in this subpart also prescribe the procedures to be followed in connection with petitions to withdraw a rule exempting a State regulation prescribing an energy conservation standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered equipment.

§ 431.62 Prescriptions of a rule.

(a) *Criteria for exemption from preemption.* Upon petition by a State which has prescribed an energy conservation standard or other requirement for a type or class of covered equipment for which a Federal energy conservation standard is applicable, the Secretary shall prescribe a rule that such standard not be preempted if he/she determines that the State has established by a preponderance of evidence that such requirement is needed to meet unusual

and compelling State or local energy interests. For the purposes of this regulation, the term ''unusual and compelling State or local energy interests'' means interests which are substantially different in nature or magnitude from those prevailing in the U.S. generally, and are such that when evaluated within the context of the State's energy plan and forecast, the costs, benefits, burdens, and reliability of energy savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all equipment subject to the State regulation. The Secretary may not prescribe such a rule if he finds that interested persons have established, by a preponderance of the evidence, that the State's regulation will significantly burden manufacturing, marketing, distribution, sale or servicing of the covered equipment on a national basis. In determining whether to make such a finding, the Secretary shall evaluate all relevant factors including: The extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others; the extent to which the State regulation will disadvantage smaller manufacturers, distributors, or dealers or lessen competition in the sale of the covered equipment in the State; the extent to which the State regulation would cause a burden to manufacturers to redesign and produce the covered equipment type (or class), taking into consideration the extent to which the regulation would result in a reduction in the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the U.S., or in the current or projected sales volume of the covered equipment type (or class) in the State and the U.S.; and the extent to which the State regulation is likely to contribute significantly to a proliferation of State commercial and industrial equipment efficiency requirements and the cumulative impact such requirements would have. The Secretary may not prescribe such a rule if he/she finds that such a rule will result in the unavailability in the State of any covered equipment (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary's finding. The failure of some classes (or types) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a rule for other classes (or types).

(1) Requirements of petition for exemption from preemption. A petition from a State for a rule for exemption from preemption shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(vi) of this section. A petition for a rule and correspondence relating to such petition shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004.

(i) The name, address, and telephone number of the petitioner;

(ii) A copy of the State standard for which a rule exempting such standard is sought;

(iii) A copy of the State's energy plan and forecast;

(iv) Specification of each type or class of covered product for which a rule exempting a standard is sought;

(v) Other information, if any, believed to be pertinent by the petitioner; and

(vi) Such other information as the Secretary may require.

(b) *Criteria for exemption from preemption when energy emergency conditions exist within State.* Upon petition by a State which has prescribed an energy conservation standard or other requirement for a type or class of covered equipment for which a Federal energy conservation standard is applicable, the Secretary may prescribe a rule, effective upon publication in the **Federal Register**, that such regulation not be preempted if he determines that in addition to meeting the requirements of paragraph (a) of this section the State has established that: an energy emergency condition exists within the State that imperils the health, safety, and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities of gas or electric energy to its residents at less than prohibitive costs; and cannot be substantially alleviated by the importation of energy or the use of interconnection agreements; and the State regulation is necessary to alleviate substantially such condition.

(1) Requirements of petition for exemption from preemption when energy emergency conditions exist within a State. A petition from a State for a rule for exemption from preemption when energy emergency conditions exist within a State shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(vi) of this section. A petition shall also include the information prescribed in paragraphs (b)(1)(i) through (b)(1)(iv) of this section, and shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004:

(i) A description of the energy emergency condition which exists within the State, including causes and impacts.

(ii) A description of emergency response actions taken by the State and utilities within the State to alleviate the emergency condition;

(iii) An analysis of why the emergency condition cannot be alleviated substantially by importation of energy or the use of interconnection agreements;

(iv) An analysis of how the State standard can alleviate substantially such emergency condition.

(c) *Criteria for withdrawal of a rule exempting a State standard.* Any person subject to a State standard which, by rule, has been exempted from Federal preemption and which prescribes an energy conservation standard or other requirement for a type or class of covered equipment, when the Federal energy conservation standard for such product subsequently is amended, may petition the Secretary requesting that the exemption rule be withdrawn. The Secretary shall consider such petition in accordance with the requirements of paragraph (a) of this section, except that the burden shall be on the petitioner to demonstrate that the exemption rule received by the State should be withdrawn as a result of the amendment to the Federal standard. The Secretary shall withdraw such rule if he determines that the petitioner has shown the rule should be withdrawn.

(1) Requirements of petition to withdraw a rule exempting a State standard. A petition for a rule to withdraw a rule exempting a State standard shall include the information prescribed in paragraphs (c)(1)(i) through (c)(1)(vii) of this section, and shall be available for public review, except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004:

(i) The name, address and telephone number of the petitioner;

(ii) A statement of the interest of the petitioner for which a rule withdrawing an exemption is sought;

(iii) A copy of the State standard for which a rule withdrawing an exemption is sought;

(iv) Specification of each type or class of covered equipment for which a rule withdrawing an exemption is sought;

(v) A discussion of the factors contained in paragraph (a) of this section;

(vi) Such other information, if any, believed to be pertinent by the petitioner; and

(vii) Such other information as the Secretary may require.

§ 431.63 Filing requirements.

(a) *Service.* All documents required to be served under this subpart shall, if mailed, be served by first class mail. Service upon a person's duly authorized representative shall constitute service upon that person.

(b) *Obligation to supply information.* A person or State submitting a petition is under a continuing obligation to provide any new or newly discovered information relevant to that petition. Such information includes, but is not limited to, information regarding any other petition or request for action subsequently submitted by that person or State.

(c) *The same or related matters.* A person or State submitting a petition or other request for action shall state whether to the best knowledge of that petitioner the same or related issue, act, or transaction has been or presently is being considered or investigated by any State agency, department, or instrumentality.

(d) *Computation of time.*

(1) Computing any period of time prescribed by or allowed under this subpart, the day of the action from which the designated period of time begins to run is not to be included. If the last day of the period is Saturday, or Sunday, or Federal legal holiday, the period runs until the end of the next day that is neither a Saturday, or Sunday or Federal legal holiday.

(2) Saturdays, Sundays, and intervening Federal legal holidays shall be excluded from the computation of time when the period of time allowed or prescribed is 7 days or less.

(3) When a submission is required to be made within a prescribed time, DOE may grant an extension of time upon good cause shown.

(4) Documents received after regular business hours are deemed to have been submitted on the next regular business day. Regular business hours for the DOE's National Office, Washington, DC, are 8:30 a.m. to 4:30 p.m.

(5) DOE reserves the right to refuse to accept, and not to consider, untimely submissions.

(e) *Filing of petitions.*

(1) A petition for a rule shall be submitted in triplicate to: The Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy, Section 327 Petitions, Appliance Efficiency Standards, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

(2) A petition may be submitted on behalf of more than one person. A joint petition shall indicate each person participating in the submission. A joint petition shall provide the information required by § 431.62 for each person on whose behalf the petition is submitted.

(3) All petitions shall be signed by the person(s) submitting the petition or by a duly authorized representative. If submitted by a duly authorized representative, the petition shall certify this authorization.

(4) A petition for a rule to withdraw a rule exempting a State regulation, all supporting documents, and all future submissions shall be served on each State agency, department, or instrumentality whose regulation the petitioner seeks to supersede. The petition shall contain a certification of this service which states the name and mailing address of the served parties, and the date of service.

(f) *Acceptance for filing.*

(1) Within fifteen (15) days of the receipt of a petition, the Secretary will either accept it for filing or reject it, and the petitioner will be so notified in writing. The Secretary will serve a copy of this notification on each other party served by the petitioner. Only such petitions which conform to the requirements of this subpart and which contain sufficient information for the purposes of a substantive decision will be accepted for filing. Petitions which do not so conform will be rejected and an explanation provided to petitioner in writing.

(2) For purposes of the Act and this subpart, a petition is deemed to be filed on the date it is accepted for filing.

(g) *Docket.* A petition accepted for filing will be assigned an appropriate docket designation. Petitioner shall use the docket designation in all subsequent submissions.

§ 431.64 Notice of petition.

(a) Promptly after receipt of a petition and its acceptance for filing, notice of such petition shall be published in the **Federal Register**. The notice shall set forth the availability for public review of all data and information available, and shall solicit comments, data and information with respect to the determination on the petition. Except as may otherwise be specified, the period for public comment shall be 60 days after the notice appears in the **Federal Register**.

(b) In addition to the material required under paragraph (a) of this section, each notice shall contain a summary of the State regulation at issue and the petitioner's reasons for the rule sought.

§ 431.65 Consolidation.

DOE may consolidate any or all matters at issue in two or more proceedings docketed where there exist common parties, common questions of fact and law, and where such consolidation would expedite or simplify consideration of the issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

§ 431.66 Hearing.

The Secretary may hold a public hearing, and publish notice in the **Federal Register** of the date and location of the hearing, when he determines that such a hearing is necessary and likely to result in a timely and effective resolution of the issues. A transcript shall be kept of any such hearing.

§ 431.67 Disposition of petitions.

(a) After the submission of public comments under Sec. 431.63(a), the Secretary shall prescribe a final rule or deny the petition within 6 months after the date the petition is filed.

(b) The final rule issued by the Secretary or a determination by the Secretary to deny the petition shall include a written statement setting forth his findings and conclusions, and the reasons and basis therefor. A copy of the Secretary's decision shall be sent to the petitioner and the affected State agency. The Secretary shall publish in the **Federal Register** a notice of the final rule granting or denying the petition and the reasons and basis therefor.

(c) If the Secretary finds that he cannot issue a final rule within the 6-month period pursuant to paragraph (a) of this section, he shall publish a notice in the **Federal Register** extending such period to a date certain, but no longer than one year after the date on which the petition was filed. Such notice shall include the reasons for the delay.

§ 431.68 Effective dates of final rules.

(a) A final rule exempting a State standard from Federal preemption will be effective:

(1) Upon publication in the **Federal Register** if the Secretary determines that such rule is needed to meet an ''energy emergency condition'' within the State.

(2) Three years after such rule is published in the **Federal Register**; or

(3) Five years after such rule is published in the **Federal Register** if the Secretary determines that such additional time is necessary due to the burdens of retooling, redesign or distribution.

(b) A final rule withdrawing a rule exempting a State standard will be effective upon publication in the **Federal Register**.

§ 431.69 Request for reconsideration.

(a) Any petitioner whose petition for a rule has been denied may request reconsideration within 30 days of denial. The request shall contain a statement of facts and reasons supporting reconsideration and shall be submitted in writing to the Secretary.

(b) The denial of a petition will be reconsidered only where it is alleged and demonstrated that the denial was based on error in law or fact and that evidence of the error is found in the record of the proceedings.

(c) If the Secretary fails to take action on the request for reconsideration within 30 days, the request is deemed denied, and the petitioner may seek such judicial review as may be appropriate and available.

(d) A petitioner has not exhausted other administrative remedies until a request for reconsideration has been filed and acted upon or deemed denied.

§ 431.70 Finality of decision.

(a) A decision to prescribe a rule that a State energy conservation standard or other requirement not be preempted is final on the date the rule is issued, i.e., signed by the Secretary. A decision to prescribe such a rule has no effect on other regulations of a covered product of any other State.

(b) A decision to prescribe a rule withdrawing a rule exempting a State standard or other requirement is final on the date the rule is issued, i.e., signed by the Secretary. A decision to deny such a petition is final on the day a denial of a request for reconsideration is issued, i.e., signed by the Secretary.

Subpart E—Labeling

§ 431.81 Purpose and scope.

This subpart establishes labeling rules for electric motors pursuant to section 344 of EPCA, 42 U.S.C. 6315. It addresses labeling and marking the equipment with information indicating its energy efficiency and compliance with applicable standards under section 342 of EPCA, 42 U.S.C. 6313, and the inclusion of such information in other material used to market the equipment. This subpart applies only to electric motors manufactured after [ONE YEAR AFTER PUBLICATION OF THIS RULE IN THE **Federal Register**].

§ 431.82 Labeling requirements.

(a) *Electric motor nameplate.*

(1) *Required information.* The permanent nameplate of an electric motor for which standards are prescribed in § 431.42 must be marked clearly with the following information:

(i) The motor's nominal full load efficiency (as of the date of manufacture), derived from the motor's average full load efficiency as determined pursuant to subpart B of this Part; and

(ii) A Compliance Certification number (''CC number'') supplied by DOE to the manufacturer or private labeler, pursuant to section 431.123(e), and applicable to that motor. Such CC number must be on the nameplate of a motor beginning 90 days after either:

(A) The manufacturer or private labeler has received the number upon submitting a Compliance Certification covering that motor, or

(B) The expiration of 21 days from DOE's receipt of a Compliance Certification covering that motor, if the manufacturer or private labeler has not been advised by DOE that the Compliance Certification fails to satisfy § 431.123.

(2) *Display of required information.* All orientation, spacing, type sizes, type faces, and line widths to display this required information shall be the same as or similar to the display of the other performance data on the motor's permanent nameplate. The nominal full load efficiency shall be identified either by the term ''Nominal Efficiency'' or ''Nom. Eff.'' or by the terms specified in paragraph 12.58.2 of NEMA MG1–1993, as for example ''NEMA Nom. Eff. _____.'' The DOE number shall be in the form ''CC_____.''

(3) *Optional display.* The permanent nameplate of an electric motor, a separate plate, or decalcomania, may be marked with the encircled lower case letters ''ee'', for example,

or with some comparable designation or logo, if the motor meets the applicable standard prescribed in § 431.42, as determined pursuant to subpart B of this part, and is covered by a Compliance Certification that satisfies § 431.123.

(b) *Disclosure of efficiency information in marketing materials.*

(1) The same information that must appear on an electric motor's permanent nameplate pursuant to paragraph (a)(1) of this section, shall be prominently displayed:

(i) on each page of a catalog that lists the motor, and

(ii) in other materials used to market the motor.

(2) The ''ee'' logo, or other similar logo or designations, may also be used in catalogs and other materials to the same extent they may be used on labels under paragraph (a)(3) of this section.

§ 431.83 Preemption of state regulations.

The provisions of this subpart E supersede any State regulation to the extent required by section 327 of the Act. Pursuant to the Act, all State regulations that require the disclosure for any electric motor of information with respect to energy consumption, other than the information required to be disclosed in accordance with this part, are superseded.

Subpart F—[Reserved]

Subpart G—Certification and Enforcement

§ 431.121 Purpose and scope.

The regulations in this subpart set forth the procedures for manufacturers to certify that electric motors comply with the applicable energy efficiency standards set forth in subpart C of this part, and set forth standards and procedures for enforcement of this part and the underlying provisions of the Act.

§ 431.122 Prohibited acts.

(a) Each of the following is a prohibited act pursuant to sections 332 and 345 of the Act:

(1) Distribution in commerce by a manufacturer or private labeler of any new covered equipment which is not labeled in accordance with an applicable labeling rule prescribed in accordance with section 344 of the Act, and in this part;

(2) Removal from any new covered equipment or rendering illegible, by a manufacturer, distributor, retailer, or private labeler, of any label required under this part to be provided with such equipment;

(3) Failure to permit access to, or copying of records required to be supplied under the Act and this part, or failure to make reports or provide other information required to be supplied under the Act and this part;

(4) Advertisement of covered equipment, by a manufacturer, distributor, retailer, or private labeler, in a catalog from which the equipment may be purchased, without including in the catalog all information as required

by § 431.82(b)(1), provided, however, that this shall not apply to an advertisement of covered equipment in a catalog if distribution of the catalog began before the effective date of the labeling rule applicable to that equipment;

(5) Failure of a manufacturer to supply at his expense a reasonable number of units of an electric motor to a test laboratory designated by the Secretary;

(6) Failure of a manufacturer to permit a representative designated by the Secretary to observe any testing required by the Act and this part, and to inspect the results of such testing; and

(7) Distribution in commerce by a manufacturer or private labeler of any new covered equipment which is not in compliance with an applicable energy efficiency standard prescribed under the Act and this part.

(b) In accordance with sections 333 and 345 of the Act, any person who knowingly violates any provision of paragraph (a) of this section may be subject to assessment of a civil penalty of no more than $110 for each violation. Each violation of paragraphs (a)(1), (2), and (7) of this section shall constitute a separate violation with respect to each unit of covered equipment, and each day of noncompliance with paragraphs (a)(3) through (6) of this section shall constitute a separate violation.

(c) For purposes of this section:

(1) the term ''new covered equipment'' means covered equipment the title of which has not passed to a purchaser who buys such equipment for purposes other than:

(i) reselling such equipment, or

(ii) leasing such equipment for a period in excess of one year; and

(2) The term ''knowingly'' means:

(i) the having of actual knowledge, or

(ii) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care.

§ 431.123 Compliance certification.

(a) *General.* Beginning 24 months after [insert date 30 days after publication in the **Federal Register**], a manufacturer or private labeler shall not distribute in commerce any basic model of an electric motor which is subject to an energy efficiency standard set forth in subpart C of this part unless it has submitted to the Department a Compliance Certification certifying, in accordance with the provisions of this section, that the basic model meets the requirements of the applicable standard. The representations in the Compliance Certification must be based upon the basic model's energy efficiency as determined in accordance with the applicable requirements of subpart B of this part. This means, in part, that either:

(1) the representations as to the basic model must be based on use of a certification organization, or

(2) any testing of the basic model on which the representations are based must be conducted at an accredited laboratory.

(b) *Required contents.*

(1) *General representations.* Each Compliance Certification must certify that:

(i) The nominal full load efficiency for each basic model of electric motor distributed is not less than the minimum nominal full load efficiency required for that motor by section § 431.42;

(ii) All required determinations on which the Compliance Certification is based were made in compliance with the applicable requirements prescribed in subpart B of this part;

(iii) All information reported in the Compliance Certification is true, accurate, and complete; and

(iv) The manufacturer or private labeler is aware of the penalties associated with violations of the Act and the regulations thereunder, and of 18 U.S.C. 1001 which prohibits knowingly making false statements to the Federal Government.

(2) *Specific data.*

(i) For each rating of electric motor (as the term ''rating'' is defined in the definition of basic model) which a manufacturer or private labeler distributes, the Compliance Certification must report the nominal full load efficiency, determined pursuant to §§ 431.23 and 431.24, of the least efficient basic model within that rating.

(ii) The Compliance Certification must identify the basic models on which actual testing has been performed to meet the requirements of section 431.24.

(iii) The format for a Compliance Certification is set forth in appendix A of this subpart.

(c) *Optional contents.* In any Compliance Certification, a manufacturer or private labeler may at its option request that DOE provide it with a unique Compliance Certification number (''CC number'') for any brand name, trademark or other label name under which the manufacturer or private labeler distributes electric motors covered by the Certification. Such a Compliance Certification must also identify all other names, if any, under which the manufacturer or private labeler distributes electric motors, and to which the request does not apply.

(d) *Signature and submission.* A manufacturer or private labeler must submit the Compliance Certification either on its own behalf, signed by a corporate officer of the company, or through a third party (for example, a trade association or other authorized representative) acting on its behalf. Where a third party is used, the Compliance Certification must identify the official of the manufacturer or private labeler who authorized the third party to make representations on the company's behalf, and must be signed by a corporate official of the third party. The Compliance Certification must be submitted to the Department by certified mail, to Department of Energy, Assistant Secretary for Energy Efficiency and Renewable Energy, Office of Building Research and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

(e) *New basic models.* For electric motors, a Compliance Certification must be submitted for a new basic model only if the manufacturer or private labeler has not previously submitted to DOE a Compliance Certification, that meets the requirements of section 431.123, for a basic model that has the same rating as the new basic model, and that has a lower nominal full load efficiency than the new basic model.

(f) *Response to Compliance Certification; Compliance Certification Number (CC number).*

(1) *DOE processing of Certification.* Promptly upon receipt of a Compliance Certification, the Department will determine whether the document contains all of the elements required by this section, and may, in its discretion, determine whether all or part of the information provided in the document is accurate. The Department will then advise the submitting party in writing either that the Compliance Certification does not satisfy the requirements of this section, in which case the document will be returned, or that the Compliance Certification satisfies this section. The Department will also advise the submitting party of the basis for its determination.

(2) *Issuance of CC number(s).*

(i) Initial Compliance Certification. When DOE advises that the initial Compliance Certification submitted by or on behalf of a manufacturer or private labeler is acceptable, either:

(A) DOE will provide a single unique CC number, ''CC_____,'' to the manufacturer or private labeler, and such CC number shall be applicable to

all electric motors distributed by the manufacturer or private labeler, or

(B) When required by paragraph (f)(2) of this section, DOE will provide more than one CC number to the manufacturer or private labeler.

(ii) Subsequent Compliance Certification. When DOE advises that any other Compliance Certification is acceptable, it will provide a unique CC number for any brand name, trademark or other name when required by paragraph (f)(3) of this section.

(iii) When DOE declines to provide a CC number as requested by a manufacturer or private labeler in accordance with § 431.123(c), DOE will advise the requester of the reasons for such refusal.

(3) *Issuance of two or more CC numbers.*

(i) DOE will provide a unique CC number for each brand name, trademark or other label name for which a manufacturer or private labeler requests such a number in accordance with § 431.123(c), except as follows. DOE will not provide a CC number for any brand name, trademark or other label name:

(A) For which DOE has previously provided a CC number, or

(B) That duplicates or overlaps with other names under which the manufacturer or private labeler sells electric motors.

(ii) Once DOE has provided a CC number for a particular name, that shall be the only CC number applicable to all electric motors distributed by the manufacturer or private labeler under that name.

(iii) If the Compliance Certification in which a manufacturer or private labeler requests a CC number is the initial Compliance Certification submitted by it or on its behalf, and it distributes electric motors not covered by the CC number(s) DOE provides in response to the request(s), DOE will also provide a unique CC number that shall be applicable to all of these other motors.

§ 431.124 Maintenance of records.

(a) The manufacturer of any electric motor subject to energy efficiency standards prescribed under section 342 of the Act must establish, maintain and retain records of the following: the underlying test data for all testing conducted under this part; the development, substantiation, application, and subsequent verification of any AEDM used under this part; and any written certification received from a certification program, including a certificate of conformity, relied on under the provisions of this part. Such records must be organized and indexed in a fashion which makes them readily accessible for review. The records must include the supporting test data associated with tests performed on any test units to satisfy the requirements of this subpart (except tests performed by the Department directly).

(b) All such records must be retained by the manufacturer for a period of two years from the date that production of the applicable basic model of electric motor has ceased. Records must be retained in a form allowing ready access to the Department upon request.

§ 431.125 Imported equipment.

(a) Pursuant to sections 331 and 345 of the Act, any person importing any covered equipment into the United States shall comply with the provisions of the Act and of this part, and is subject to the remedies of this part.

(b) Any covered equipment offered for importation in violation of the Act and of this part shall be refused admission into the customs territory of the United States under rules issued by the Secretary of the Treasury, except that the Secretary of the Treasury may, by such rules, authorize the importation of such covered equipment upon such terms and conditions (including the furnishing of a bond) as may appear to the Secretary of Treasury appropriate to ensure that such covered equipment will not violate the Act and this part, or will be exported or abandoned to the United States.

§ 431.126 Exported equipment.

Pursuant to sections 330 and 345 of the Act, this part shall not apply to any covered equipment if (a) such covered equipment is manufactured, sold, or held for sale for export from the United States (or such product was imported for export), unless such equipment is, in fact, distributed in commerce for use in the United States, and (b) such covered equipment, when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such covered equipment is intended for export.

§ 431.127 Enforcement.

(a) *Test notice.* Upon receiving information in writing, concerning the energy performance of a particular electric motor sold by a particular manufacturer or private labeler, which indicates that the electric motor may not be in compliance with the applicable energy efficiency standard, or upon undertaking to ascertain the accuracy of the efficiency rating on the nameplate or in marketing materials for an electric motor, disclosed pursuant to subpart E of this part, the Secretary may conduct testing of that covered equipment under this subpart by means of a test notice addressed to the manufacturer in accordance with the following requirements:

(1) The test notice procedure will only be followed after the Secretary or his/her designated representative has examined the underlying test data (or, where appropriate, data as to use of an alternative efficiency determination method) provided by the manufacturer and after the manufacturer has been offered the opportunity to meet with the Department to verify, as applicable, compliance with the applicable efficiency standard, or the accuracy of labeling information, or both. In addition, where compliance of a basic model was certified based on an AEDM, the Department shall have the discretion to pursue the provisions of section 431.24(a)(4)(iii) prior to invoking the test notice procedure. A representative designated by the Secretary shall be permitted to observe any reverification procedures undertaken pursuant to this subpart, and to inspect the results of such reverification.

(2) The test notice will be signed by the Secretary or his/her designee. The test notice will be mailed or delivered by the Department to the plant manager or other responsible official, as designated by the manufacturer.

(3) The test notice will specify the model or basic model to be selected for testing, the method of selecting the test sample, the date and time at which testing shall be initiated, the date by which testing is scheduled to be completed and the facility at which testing will be conducted. The test notice may also provide for situations in which the specified basic model is unavailable for testing, and may include alternative basic models.

(4) The Secretary may require in the test notice that the manufacturer of an electric motor shall ship at his expense a reasonable number of units of a basic model specified in such test notice to a testing laboratory designated by the Secretary. The number of units of a basic model specified in a test notice shall not exceed twenty (20).

(5) Within five working days of the time the units are selected, the manufacturer shall ship the specified test units of a basic model to the testing laboratory.

(b) *Testing laboratory.* Whenever the Department conducts enforcement testing at a designated laboratory in accordance with a test notice under this section, the resulting test data shall constitute official test data for that basic model. Such test data will be used by the Department to make a determination

of compliance or noncompliance if a sufficient number of tests have been conducted to satisfy the requirements of appendix B of this subpart.

(c) *Sampling.* The determination that a manufacturer's basic model complies with its labeled efficiency, or the applicable energy efficiency standard, shall be based on the testing conducted in accordance with the statistical sampling procedures set forth in appendix B of this subpart and the test procedures set forth in appendix A to subpart B of this part.

(d) *Test unit selection.* A Department inspector shall select a batch, a batch sample, and test units from the batch sample in accordance with the provisions of this paragraph and the conditions specified in the test notice.

(1) The batch may be subdivided by the Department utilizing criteria specified in the test notice.

(2) A batch sample of up to 20 units will then be randomly selected from one or more subdivided groups within the batch. The manufacturer shall keep on hand all units in the batch sample until such time as the basic model is determined to be in compliance or non-compliance.

(3) Individual test units comprising the test sample shall be randomly selected from the batch sample.

(4) All random selection shall be achieved by sequentially numbering all of the units in a batch sample and then using a table of random numbers to select the units to be tested.

(e) *Test unit preparation.*

(1) Prior to and during the testing, a test unit selected in accordance with paragraph (d) of this section shall not be prepared, modified, or adjusted in any manner unless such preparation, modification, or adjustment is allowed by the applicable Department of Energy test procedure. One test shall be conducted for each test unit in accordance with the applicable test procedures prescribed in appendix A to subpart B.

(2) No quality control, testing, or assembly procedures shall be performed on a test unit, or any parts and sub-assemblies thereof, that is not performed during the production and assembly of all other units included in the basic model.

(3) A test unit shall be considered defective if such unit is inoperative or is found to be in noncompliance due to failure of the unit to operate according to the manufacturer's design and operating instructions. Defective units, including those damaged due to shipping or handling, shall be reported immediately to the Department. The Department shall authorize testing of an additional unit on a case-by-case basis.

(f) *Testing at manufacturer's option.*

(1) If a manufacturer's basic model is determined to be in noncompliance with the applicable energy performance standard at the conclusion of Department testing in accordance with the sampling plan specified in appendix B of this subpart, the manufacturer may request that the Department conduct additional testing of the basic model according to procedures set forth in appendix B of this subpart.

(2) All units tested under this paragraph shall be selected and tested in accordance with the provisions given in paragraphs (a) through (e) of this section.

(3) The manufacturer shall bear the cost of all testing conducted under this paragraph.

(4) The manufacturer shall cease distribution of the basic model tested under the provisions of this paragraph from the time the manufacturer elects to exercise the option provided in this paragraph until the basic model is determined to be in compliance. The Department may seek civil penalties for all units distributed during such period.

(5) If the additional testing results in a determination of compliance, a notice of allowance to resume distribution shall be issued by the Department.

§ 431.128 Cessation of distribution of a basic model.

(a) In the event that a model is determined non-compliant by the Department in accordance with § 431.127 of this part or if a manufacturer or private labeler determines a model to be in noncompliance, then the manufacturer or private labeler shall:

(1) Immediately cease distribution in commerce of the basic model.

(2) Give immediate written notification of the determination of noncompliance, to all persons to whom the manufacturer has distributed units of the basic model manufactured since the date of the last determination of compliance.

(3) Pursuant to a request made by the Secretary, provide the Department within 30 days of the request, records, reports, and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of a basic model determined to be in noncompliance.

(4) The manufacturer may modify the non-compliant basic model in such manner as to make it comply with the applicable performance standard. Such modified basic model shall then be treated as a new basic model and must be certified in accordance with the provisions of this subpart; except that in addition to satisfying all requirements of this subpart, the manufacturer shall also maintain records that demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce.

(b) If a basic model is not properly certified in accordance with the requirements of this subpart, the Secretary may seek, among other remedies, injunctive action to prohibit distribution in commerce of such basic model.

§ 431.129 Subpoena.

Pursuant to sections 329(a) and 345 of the Act, for purposes of carrying out this part, the Secretary or the Secretary's designee, may sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant books, records, papers, and other documents, and administer the oaths. Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of contumacy by, or refusal to obey a subpoena served upon any persons subject to this part, the Secretary may seek an order from the District Court of the United States for any District in which such person is found or resides or transacts business requiring such person to appear and give testimony, or to appear and produce documents. Failure to obey such order is punishable by such court as a contempt thereof.

§ 431.130 Remedies.

If the Department determines that a basic model of a covered equipment does not comply with an applicable energy conservation standard:

(a) The Department will notify the manufacturer, private labeler, or any other person as required of this finding and of the Secretary's intent to seek a judicial order restraining further distribution in commerce of such basic model unless the manufacturer, private labeler or any other person as required, delivers to the Department within 15 calendar days a statement, satisfactory to the Department, of the steps he will take to ensure that the non-compliant model will no longer be distributed in commerce. The Department will monitor the implementation of such statement.

(b) If the manufacturer, private labeler, or any other person as required, fails to stop distribution of the non-compliant model, the Secretary may seek to restrain such violation in

accordance with sections 334 and 345 of the Act.

(c) The Secretary shall determine whether the facts of the case warrant the assessment of civil penalties for knowing violations in accordance with sections 333 and 345 of the Act.

§ 431.131 Hearings and appeals.

(a) Pursuant to sections 333(d) and 345 of the Act, before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of that person's opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (c) of this section (in lieu of those in paragraph (b) of this section) apply with respect to such assessment.

(b)(1) Unless an election is made within 30 calendar days after receipt of notice under paragraph (a) of this section to have paragraph (c) of this section apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3195 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(2) Any person against whom a penalty is assessed under this section may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States Court of Appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(c)(1) In the case of any civil penalty with respect to which the procedures of this section have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (a) of this section of the proposed penalty.

(2) If the civil penalty has not been paid within 60 calendar days after the assessment has been made under paragraph (c)(1) of this section, the Secretary shall institute an action in the appropriate District Court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(3) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(d) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (b) of this section, or after the appropriate District Court has entered final judgment in favor of the Secretary under paragraph (c) of this section, the Secretary shall institute an action to recover the amount of such penalty in any appropriate District Court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(e)(1) In accordance with the provisions of sections 333(d)(5)(A) and 345 of the Act and notwithstanding the provisions of title 28, United States Code, or section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the General Counsel of the Department of Energy (or any attorney or attorneys within the Department designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which paragraph (c) of this section applies including any related collection action under paragraph (d) of this section in a court of the United States or in any other court, except the Supreme Court of the United States. However, the Secretary or the General Counsel shall consult with the Attorney General concerning such litigation and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(2) In accordance with the provisions of sections 333(d)(5)(B) and 345 of the Act, and subject to the provisions of section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this section, except to the extent provided in paragraph (e)(1) of this section.

(3) In accordance with the provisions of sections 333(d)(5)(C) and 345 of the Act, section 402(d) of the Department of Energy Organization Act shall not apply with respect to the function of the Secretary under this section.

§ 431.132 Confidentiality.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which the person believes to be confidential and exempt from public disclosure should submit one complete copy, and fifteen copies from which the information believed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, the Department shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

BILLING CODE 6450–01–P

APPENDIX A TO SUBPART G OF PART 431 — COMPLIANCE CERTIFICATION

CERTIFICATION OF COMPLIANCE WITH ENERGY EFFICIENCY STANDARDS FOR ELECTRIC MOTORS

(Office of Management and Budget Control Number: 1910-5104. Expires 02/28/2001)

1. Name and Address of Company (the "company"):

_____

_____

_____

_____

2. Name(s) to be Marked on Electric Motors to Which this Compliance Certification Applies:

_____

_____

_____

_____

3. If manufacturer or private labeler wishes to receive a unique Compliance Certification number for use with any particular brand name, trademark, or other label name, fill out the following two items:

A. List each brand name, trademark, or other label name for which the company requests a Compliance Certification number:

_____

_____

_____

B. List other name(s), if any, under which the company sells electric motors (if not listed in item 2 above):

_____

_____

_____

Submit by Certified Mail to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Building Research and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585-0121.

This Compliance Certification reports on and certifies compliance with requirements contained in 10 CFR Part 431 (Energy Conservation Program for Certain Commercial and Industrial Equipment) and Part C of the Energy Policy and Conservation Act (Public Law 94-163), and amendments thereto. It is signed by a responsible official of the above named company. Attached and incorporated as part of this Compliance Certification is a Listing of Electric Motor Efficiencies. For each rating of electric motor* for which the Listing specifies the nominal full load efficiency of a basic model, the company distributes no less efficient basic model with that rating and all basic models with that rating comply with the applicable energy efficiency standard.

* For this purpose, the term "rating" means one of the 113 combinations of an electric motor's horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction, with respect to which section 431.42 of 10 CFR Part 431 prescribes nominal full load efficiency standards.

Person to Contact for Further Information:

Name: _____

Address: _____

_____

_____

_____

Telephone Number: _____

Facsimile Number: _____

If any part of this Compliance Certification, including the Attachment, was prepared by a third party organization under the provisions of section 431.123 of 10 CFR Part 431, the company official authorizing third party representations:

Name: _____

Address: _____

_____

_____

_____

Telephone Number: _____

Facsimile Number: _____

Third Party Organization Officially Acting as Representative:

Third Party Organization: _____

Responsible Person at that Organization: _____

Address: _____

_____

_____

_____

Telephone Number: _____

Facsimile Number: _____

All required determinations on which this Compliance Certification is based were made in conformance with the applicable requirements in 10 CFR Part 431, subpart B. All information reported in this Compliance Certification is true, accurate, and complete. The company is aware of the penalties associated with violations of the Act and the regulations thereunder, and is also aware of the provisions contained in 18 U.S.C. 1001, which prohibits knowingly making false statements to the Federal Government.

Signature: _____ Date: _____

Name: _____

Title: _____

Firm or Organization: _____

ATTACHMENT TO CERTIFICATION OF COMPLIANCE WITH ENERGY EFFICIENCY STANDARDS FOR ELECTRIC MOTORS: LISTING OF ELECTRIC MOTOR EFFICIENCIES

Date: _____

Name of Company: _____

_____

Rating of Electric Motor

Motor Horsepower/ Kilowatts	Number of Poles	Open or Enclosed Motor	Least Efficient Basic Model - (Model Number(s))	Nominal Full Load Efficiency
1 or .75	6	Open	_____	_____
1 or .75	4	Open	_____	_____
1 or .75	6	Enclosed	_____	_____
1 or .75	4	Enclosed	_____	_____
1 or .75	2	Enclosed	_____	_____
1.5 or 1.1	6	Open	_____	_____
1.5 or 1.1	4	Open	_____	_____
1.5 or 1.1	2	Open	_____	_____
1.5 or 1.1	6	Enclosed	_____	_____
1.5 or 1.1	4	Enclosed	_____	_____
1.5 or 1.1	2	Enclosed	_____	_____
...	...	...	_____	_____
etc.	etc.	etc.	_____	_____

Note: Place an asterisk beside each reported nominal full load efficiency that is determined by actual testing rather than by application of an alternative efficiency determination method. Also list below additional basic models that were subjected to actual testing.

Basic Model means all units of a given type of covered equipment (or class thereof) manufactured by a single manufacturer, and, with respect to electric motors, which (i) have the same rating, (ii) have electrical design characteristics that are essentially identical, and (iii) do not have any differing physical or functional characteristics that affect energy consumption or efficiency.

Rating means one of the 113 combinations of an electric motor's horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction, with respect to which section 431.42 of 10 CFR Part 431 prescribes nominal full load efficiency standards.

Models Actually Tested and Not Previously Identified:

Rating of Electric Motor				
Motor Power Output (e.g. 1 hp or .75 kW)	**Number of Poles**	**Open or Enclosed Motor**	**Basic Model(s) (Model Number(s))**	**Nominal Full Load Efficiency**
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
...	...	...	...	...
etc.	etc.	etc.	etc.	etc.

BILLING CODE 6450–01–C

Appendix B to Subpart G of Part 431—Sampling Plan for Enforcement Testing

Step 1. The first sample size (n_1) must be five or more units.

Step 2. Compute the mean ($\bar{X}_1$) of the measured energy performance of the n_1 units in the first sample as follows:

$$\bar{X}_1 = \frac{1}{n_1}\sum_{i=1}^{n_1} X_i \qquad (1)$$

where X_i is the measured full-load efficiency of unit i.

Step 3. Compute the sample standard deviation (S_1) of the measured full-load efficiency of the n_1, units in the first sample as follows:

$$S_1 = \sqrt{\frac{\sum_{i=1}^{n_1}\left(X_i - \bar{X}_1\right)^2}{n_1 - 1}} \qquad (2)$$

Step 4. Compute the standard error ($SE(X_1)$) of the mean full-load efficiency of the first sample as follows:

$$SE\left(\bar{X}_1\right) = \frac{S_1}{\sqrt{n_1}} \qquad (3)$$

Step 5. Compute the lower control limit (LCL_1) for the mean of the first sample using RE as the desired mean as follows:

$$LCL_1 = RE - tSE\left(\bar{X}_1\right) \qquad (4)$$

where:

RE is the applicable EPCA nominal full-load efficiency when the test is to determine compliance with the applicable statutory standard, or is the labeled nominal full-load efficiency when the test is to determine compliance with the labeled efficiency value, and

t is the 2.5th percentile of a t-distribution for a sample size of n_1, which yields a 97.5 percent confidence level for a one-tailed t-test.

Step 6. Compare the mean of the first sample ($\bar{X}_1$) with the lower control limit (LCL_1) to determine one of the following:

(i) If the mean of the first sample is below the lower control limit, then the basic model is in non-compliance and testing is at an end.

(ii) If the mean is equal to or greater than the lower control limit, no final determination of compliance or non-compliance can be made; proceed to Step 7.

Step 7. Determine the recommended sample size (n) as follows:

$$n = \left[\frac{tS_1(120 - 0.2RE)}{RE(20 - 0.2RE)}\right]^2 \qquad (5)$$

where S_1, RE and t have the values used in Steps 3 and 5, respectively. The factor

$$\frac{120 - 0.2RE}{RE(20 - 0.2RE)}$$

is based on a 20 percent tolerance in the total power loss at full-load and fixed output power.

Given the value of n, determine one of the following:

(i) If the value of n is less than or equal to n_1 and if the mean energy efficiency of the first sample ($\bar{X}_1$) is equal to or greater than the lower control limit (LCL_1), the basic model is in compliance and testing is at an end.

(ii) If the value of n is greater than n_1, the basic model is in non-compliance. The size of a second sample n_2 is determined to be the smallest integer equal to or greater than the difference $n - n_1$. If the value of n_2 so calculated is greater than $20 - n_1$, set n_2 equal to $20 - n_1$.

Step 8. Compute the combined mean ($\bar{X}_2$) of the measured energy performance of the n_1 and n_2 units of the combined first and second samples as follows:

$$\bar{X}_2 = \frac{1}{n_1 + n_2}\sum_{i=1}^{n_1+n_2} X_i \qquad (6)$$

Step 9. Compute the standard error ($SE(\bar{X}_2)$) of the mean full-load efficiency of the n_1 and n_2 units in the combined first and second samples as follows:

$$SE\left(\bar{X}_2\right) = \frac{S_1}{\sqrt{n_1 + n_2}} \qquad (7)$$

(Note that S_1 is the value obtained above in Step 3.)

Step 10. Set the lower control limit (LCL_2) to,

$$LCL_2 = RE - tSE\left(\bar{X}_2\right) \qquad (8)$$

where t has the value obtained in Step 5, and compare the combined sample mean ($\bar{X}_2$) to the lower control limit (LCL_2) to find one of the following:

(i) If the mean of the combined sample ($\bar{X}_2$) is less than the lower control limit (LCL_2), the basic model is in non-compliance and testing is at an end.

(ii) If the mean of the combined sample ($\bar{X}_2$) is equal to or greater than the lower control limit (LCL_2), the basic model is in compliance and testing is at an end.

Manufacturer-Option Testing

If a determination of non-compliance is made in Steps 6, 7 or 10, above, the manufacturer may request that additional testing be conducted, in accordance with the following procedures.

Step A. The manufacturer requests that an additional number, n_3, of units be tested, with n_3 chosen such that $n_1 + n_2 + n_3$ does not exceed 20.

Step B. Compute the mean full-load efficiency, standard error, and lower control limit of the new combined sample in accordance with the procedures prescribed in Steps 8, 9, and 10, above.

Step C. Compare the mean performance of the new combined sample to the lower control limit (LCL_2) to determine one of the following:

(a) If the new combined sample mean is equal to or greater than the lower control limit, the basic model is in compliance and testing is at an end.

(b) If the new combined sample mean is less than the lower control limit and the value of $n_1 + n_2 + n_3$ is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

(c) Otherwise, the basic model is determined to be in non-compliance.

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Tuesday
October 5, 1999

Part IV

The President

Executive Order 13139—Improving Health Protection of Military Personnel Participating in Particular Military Operations

Federal Register
Vol. 64, No. 192
Tuesday, October 5, 1999

Presidential Documents

Title 3—

The President

Executive Order 13139 of September 30, 1999

Improving Health Protection of Military Personnel Participating in Particular Military Operations

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1107 of title 10, United States Code, and in order to provide the best health protection to military personnel participating in particular military operations, it is hereby ordered as follows:

Section 1. *Policy.* Military personnel deployed in particular military operations could potentially be exposed to a range of chemical, biological, and radiological weapons as well as diseases endemic to an area of operations. It is the policy of the United States Government to provide our military personnel with safe and effective vaccines, antidotes, and treatments that will negate or minimize the effects of these health threats.

Sec. 2. *Administration of Investigational New Drugs to Members of the Armed Forces.*

(a) The Secretary of Defense (Secretary) shall collect intelligence on potential health threats that might be encountered in an area of operations. The Secretary shall work together with the Secretary of Health and Human Services to ensure appropriate countermeasures are developed. When the Secretary considers an investigational new drug or a drug unapproved for its intended use (investigational drug) to represent the most appropriate countermeasure, it shall be studied through scientifically based research and development protocols to determine whether it is safe and effective for its intended use.

(b) It is the expectation that the United States Government will administer products approved for their intended use by the Food and Drug Administration (FDA). However, in the event that the Secretary considers a product to represent the most appropriate countermeasure for diseases endemic to the area of operations or to protect against possible chemical, biological, or radiological weapons, but the product has not yet been approved by the FDA for its intended use, the product may, under certain circumstances and strict controls, be administered to provide potential protection for the health and well-being of deployed military personnel in order to ensure the success of the military operation. The provisions of 21 CFR Part 312 contain the FDA requirements for investigational new drugs.

Sec. 3. *Informed Consent Requirements and Waiver Provisions.*

(a) Before administering an investigational drug to members of the Armed Forces, the Department of Defense (DoD) must obtain informed consent from each individual unless the Secretary can justify to the President a need for a waiver of informed consent in accordance with 10 U.S.C. 1107(f). Waivers of informed consent will be granted only when absolutely necessary.

(b) In accordance with 10 U.S.C. 1107(f), the President may waive the informed consent requirement for the administration of an investigational drug to a member of the Armed Forces in connection with the member's participation in a particular military operation, upon a written determination by the President that obtaining consent:

(1) is not feasible;

(2) is contrary to the best interests of the member; or

(3) is not in the interests of national security.

(c) In making a determination to waive the informed consent requirement on a ground described in subsection (b)(1) or (b)(2) of this section, the President is required by law to apply the standards and criteria set forth in the relevant FDA regulations, 21 CFR 50.23(d). In determining a waiver based on subsection (b)(3) of this section, the President will also consider the standards and criteria of the relevant FDA regulations.

(d) The Secretary may request that the President waive the informed consent requirement with respect to the administration of an investigational drug. The Secretary may not delegate the authority to make this waiver request. At a minimum, the waiver request shall contain:

(1) A full description of the threat, including the potential for exposure. If the threat is a chemical, biological, or radiological weapon, the waiver request shall contain an analysis of the probability the weapon will be used, the method or methods of delivery, and the likely magnitude of its affect on an exposed individual.

(2) Documentation that the Secretary has complied with 21 CFR 50.23(d). This documentation shall include:

(A) A statement that certifies and a written justification that documents that each of the criteria and standards set forth in 21 CFR 50.23(d) has been met; or

(B) If the Secretary finds it highly impracticable to certify that the criteria and standards set forth in 21 CFR 50.23(d) have been fully met because doing so would significantly impair the Secretary's ability to carry out the particular military mission, a written justification that documents which criteria and standards have or have not been met, explains the reasons for failing to meet any of the criteria and standards, and provides additional justification why a waiver should be granted solely in the interests of national security.

(3) Any additional information pertinent to the Secretary's determination, including the minutes of the Institutional Review Board's (IRB) deliberations and the IRB members' voting record.

(e) The Secretary shall develop the waiver request in consultation with the FDA.

(f) The Secretary shall submit the waiver request to the President and provide a copy to the Commissioner of the FDA (Commissioner).

(g) The Commissioner shall expeditiously review the waiver request and certify to the Assistant to the President for National Security Affairs (APNSA) and the Assistant to the President for Science and Technology (APST) whether the standards and criteria of the relevant FDA regulations have been adequately addressed and whether the investigational new drug protocol may proceed subject to a decision by the President on the informed consent waiver request. FDA shall base its decision on, and the certification shall include an analysis describing, the extent and strength of the evidence on the safety and effectiveness of the investigational new drug in relation to the medical risk that could be encountered during the military operation.

(h) The APNSA and APST will prepare a joint advisory opinion as to whether the waiver of informed consent should be granted and will forward it, along with the waiver request and the FDA certification to the President.

(i) The President will approve or deny the waiver request and will provide written notification of the decision to the Secretary and the Commissioner.

Sec. 4. *Required Action After Waiver is Issued.* (a) Following a Presidential waiver under 10 U.S.C. 1107(f), the DoD offices responsible for implementing the waiver, DoD's Office of the Inspector General, and the FDA, consistent with its regulatory role, will conduct an ongoing review and monitoring to assess adherence to the standards and criteria under 21 CFR 50.23(d) and this order. The responsible DoD offices shall also adhere to any periodic reporting requirements specified by the President at the time of the waiver approval. The Secretary shall submit the findings to the President and provide a copy to the Commissioner.

(b) The Secretary shall, as soon as practicable, make the congressional notifications required by 10 U.S.C. 1107(f)(2)(B).

(c) The Secretary shall, as soon as practicable and consistent with classification requirements, issue a public notice in the **Federal Register** describing each waiver of informed consent determination and a summary of the most updated scientific information on the products used, as well as other information the President determines is appropriate.

(d) The waiver will expire at the end of 1 year (or an alternative time period not to exceed 1 year, specified by the President at the time of approval), or when the Secretary informs the President that the particular military operation creating the need for the use of the investigational drug has ended, whichever is earlier. The President may revoke the waiver based on changed circumstances or for any other reason. If the Secretary seeks to renew a waiver prior to its expiration, the Secretary must submit to the President an updated request, specifically identifying any new information available relevant to the standards and criteria under 21 CFR 50.23(d). To request to renew a waiver, the Secretary must satisfy the criteria for a waiver as described in section 3 of this order.

(e) The Secretary shall notify the President and the Commissioner if the threat countered by the investigational drug changes significantly or if significant new information on the investigational drug is received.

Sec. 5. *Training for Military Personnel.* (a) The DoD shall provide ongoing training and health risk communication on the requirements of using an investigational drug in support of a military operation to all military personnel, including those in leadership positions, during chemical and biological warfare defense training and other training, as appropriate. This ongoing training and health risk communication shall include general information about 10 U.S.C. 1107 and 21 CFR 50.23(d).

(b) If the President grants a waiver under 10 U.S.C. 1107(f), the DoD shall provide training to all military personnel conducting the waiver protocol and health risk communication to all military personnel receiving the specific investigational drug to be administered prior to its use.

(c) The Secretary shall submit the training and health risk communication plans as part of the investigational new drug protocol submission to the FDA and the reviewing IRB. Training and health risk communication shall include at a minimum:

(1) The basis for any determination by the President that informed consent is not or may not be feasible;

(2) The means for tracking use and adverse effects of the investigational drug;

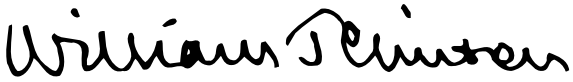
(3) The benefits and risks of using the investigational drug; and

(4) A statement that the investigational drug is not approved (or not approved for the intended use).

(d) The DoD shall keep operational commanders informed of the overall requirements of successful protocol execution and their role, with the support of medical personnel, in ensuring successful execution of the protocol.

Sec. 6. *Scope.* (a) This order applies to the consideration and Presidential approval of a waiver of informed consent under 10 U.S.C. 1107 and does not apply to other FDA regulations.

(b) This order is intended only to improve the internal management of the Federal Government. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.



THE WHITE HOUSE,
September 30, 1999.

[FR Doc. 99–26078
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Tuesday
October 5, 1999

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 50 and 312

Human Drugs and Biologics; Determination That Informed Consent Is NOT Feasible or Is Contrary to the Best Interests of Recipients; Revocation of 1990 Interim Final Rule; Establishment of New Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 50 and 312

RIN 0910–AA89

[Docket No. 90N–0302]

Human Drugs and Biologics; Determination That Informed Consent Is NOT Feasible or Is Contrary to the Best Interests of Recipients; Revocation of 1990 Interim Final Rule; Establishment of New Interim Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; opportunity for public comment.

SUMMARY: The Food and Drug Administration (FDA) is revoking its 1990 interim final regulations that permitted the Commissioner of Food and Drugs (the Commissioner) to determine that obtaining informed consent from military personnel for the use of an investigational drug or biologic is not feasible in certain situations related to military combat. FDA also is issuing a new interim final rule addressing waiver of informed consent in military operations. FDA is taking these actions based on its analysis and consideration of all relevant facts, including its evaluation of the Department of Defense's (DOD) experience during the Persian Gulf War, its evaluation of the comments received by the agency in response to the agency's July 31, 1997, request for comments on whether the agency should revise or revoke the interim regulations, and the enactment of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (the Defense Authorization Act). Under the Defense Authorization Act, the President is authorized to waive the Federal Food, Drug, and Cosmetic Act's (the act) informed consent requirements in military operations if the President finds that obtaining consent is infeasible or contrary to the best interests of recipients and on an additional ground that obtaining consent is contrary to national security interests. In light of the enactment of the Defense Authorization Act, with an immediate effective date, and because the President could be called upon to make a waiver determination for military personnel engaged in a specific military operation at any time, the agency believes that it is critical to have in place adequate criteria and standards for the President to apply in making an informed consent waiver determination. Therefore, FDA is issuing a new interim final regulation with an immediate effective date to establish criteria and standards for the President to apply in making a determination that informed consent is not feasible or is contrary to the best interests of the individual recipients.

DATES: Effective October 5, 1999. Submit written comments by December 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: Bonnie M. Lee, Division of Compliance Policy, Office of Enforcement, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0415.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is revoking its interim final regulations related to informed consent for human drug and biological products that permitted the Commissioner to determine that obtaining informed consent from military personnel for the use of an investigational drug or biologic is not feasible in certain situations related to military combat. On a case-by-case basis, the interim final rule authorized the Commissioner to make such a determination at the written request of the Assistant Secretary of Defense (Health Affairs). Any determination made with respect to the nonfeasibility of obtaining informed consent expired at the end of 1 year, unless renewal was requested, or when DOD informed the Commissioner that the military operation had ended, whichever was earlier.

In the **Federal Register** of July 31, 1997 (62 FR 40996), FDA published a document entitled ''Request for Comments'' that discussed the use of investigational drugs and biologicals in military and other emergency settings to treat or prevent toxicity of chemical or biological substances (hereinafter referred to as the July 1997 request for comments). In this document, FDA provided extensive background on the development and implementation of the 1990 interim rule and DOD's experience during the Persian Gulf War. The agency's request for comments included specific questions in the three following subject areas.

First, the agency asked whether its rule permitting waiver of informed consent in very limited circumstances involving military exigencies should be revoked or amended, and if so, how. In 1990, FDA issued an interim rule (''Informed Consent for Human Drugs and Biologics; Determination that Informed Consent is Not Feasible'' (§ 50.23(d) (21 CFR 50.23(d)) (55 FR 52814, December 21, 1990)), allowing the Commissioner to make the determination, in response to product specific requests from DOD, that obtaining informed consent from military personnel for the use of an investigational drug or biological product is not feasible in certain battlefield or combat-related situations.

Second, because information on a product's efficacy in reducing or preventing toxicity of chemical or biological substances is important, the agency also asked when, if ever, it is ethical to expose volunteers to toxic chemical and biological substances to test the efficacy of products that may be used to provide potential protection against those substances.

Third, because these products are critically important, even if they cannot be ethically tested in humans to demonstrate efficacy, the agency asked what evidence of efficacy, other than that from human trials, would be appropriate to demonstrate the safety and efficacy of products that may provide protection against toxic chemical and biological substances.

In a related document published elsewhere in this issue of the **Federal Register**, FDA has addressed the second and third issues in a proposed regulation that discusses the evidence needed to demonstrate efficacy of new drugs for use against lethal or permanently disabling toxic substances when definitive efficacy studies in humans cannot ethically be conducted. The agency believes that, if issued, this proposed rule may make it possible to develop evidence sufficient to support approval of such drugs and thus should help minimize the need to use investigational products in military exigencies.

With respect to the first question, waiver of informed consent in military operations, FDA's decision to revoke the 1990 interim rule is based on consideration of all relevant facts, including FDA's evaluation of DOD's experience during the Persian Gulf War, FDA's analysis of the comments received in response to the first issue addressed in the July 1997 request for comments on whether the agency should revise or revoke the interim rule (62 FR 40996), and the recent enactment of the Defense Authorization Act.

Section 731 of the Defense Authorization Act, amending 10 U.S.C.

1107(f), became effective on October 17, 1998. Under 10 U.S.C. 1107(f), the Commissioner of Food and Drugs no longer has the authority to make waiver of informed consent decisions in military operations because 10 U.S.C. 1107(f)(1) explicitly vests the authority to waive the act's informed consent requirement in the President. Section 1107(f)(1) of Title 10 provides for such waiver in the case of the administration of an investigational new drug or drug unapproved for its applied use to a member of the armed forces in connection with the member's participation in a particular military operation. Section 1107(f)(1) of Title 10 authorizes the President to waive informed consent if the President finds that obtaining informed consent is: (1) Not feasible; (2) contrary to the best interests of the member; or (3) not in the interests of national security. The first two grounds (lack of feasibility or contrary to the best interests of recipients) are specified in section 505(i) of the act (21 U.S.C. 355(i)).

Section 1107(f)(2) of Title 10 provides that, in making a determination to waive informed consent on the grounds that it is not feasible or contrary to the best interests of the armed services member, the President shall apply the standards and criteria that are set forth in the relevant FDA regulations for a waiver of the prior consent requirement on that ground.

Because section 1107(f)(1) of Title 10 refers to waiver of informed consent in connection with military operations, the relevant FDA regulations referenced in section 1107(f)(2) of Title 10 would be any regulations dealing with waivers in this context. As discussed previously, FDA originally issued such regulations as an interim final rule in 1990 (55 FR 52814, December 21, 1990), at § 50.23(d)(1) through (d)(4). These regulations consisted of procedures to be followed by the Assistant Secretary of Defense (Health Affairs) and the Commissioner of Food and Drugs (§ 50.23(d)(1)); standards and criteria for granting such waivers (§ 50.23(d)(1) and (d)(2)); a discretionary provision for consultation with advisory committees (§ 50.23(d)(3)) and time limits for such waivers (§ 50.23(d)(4)). These regulations conflict with section 1107(f)(1) of Title 10 in that they vest FDA's Commissioner with the authority to make such waiver decisions.

As reflected in a number of the comments FDA received on the 1990 interim rule, many people addressed the issue of whether waiver of informed consent in military operations involving military personnel is ever acceptable, and if so, when. In the Defense Authorization Act, Congress has addressed that issue by explicitly providing for waiver of the informed consent requirement by the President in certain situations. In light of the immediate effective date of the Defense Authorization Act, the agency believes that it is critical to have in place adequate criteria and standards for the President to apply in making an informed consent waiver determination.

Based on the extensive examination of issues associated with the existing interim final rule during the last 8 years, the agency has developed a new rule consistent with the Defense Authorization Act that contains new strengthened criteria and standards that the President can use in making informed consent waiver determinations. The agency believes that it is in the public interest to have these new criteria and standards in place and available for use should the President be called upon to make a waiver determination while, at the same time, it solicits public comments on these criteria and standards. These new criteria and standards are discussed in greater detail later in this document.

II. Comments Received on Whether to Revoke or Amend the 1990 Interim Rule

The agency received 134 comments on whether it should revoke or amend the 1990 interim rule: Of these, 119 comments expressed opposition to the interim rule and recommended that it be permanently revoked, 7 comments recommended changes to the interim rule, 2 comments supported retention of the interim rule, and 6 comments misunderstood the scope of the interim rule and provided comments on a different regulation.

A. Summary of Comments Recommending That the Interim Rule Be Revoked

The 119 comments that recommended the revocation of the interim rule were signed by 160 individuals including veterans, veterans' relatives, active military personnel, active military families, ethicists, physicians, other health care providers, and private citizens, as well as from an advocacy group for ailing Persian Gulf Veterans, an organization representing grassroots veterans' organizations in America and England, and a nonprofit public interest organization.

Most of these comments opposed the agency's continued use of the interim rule after the experience of the Persian Gulf War. Many thought it should never have been used. Specifically, 114 comments stated that informed consent was absolutely essential and that military personnel, like other nonmilitary citizens, should receive adequate information about an investigational product before its use and have the right to refuse to receive it. Seventeen comments stressed the need for followup of possible adverse reactions to investigational products, and 15 comments indicated that DOD could not fulfill its responsibilities even if FDA required adequate followup and other requirements as part of a new regulation. Five comments stated that DOD had shown itself to be incapable of adequate oversight and recordkeeping and three comments noted that the interim rule had not been implemented by DOD as had been intended. Several comments suggested that if the rule were to be used again, there must be an independent board of medical and ethical experts, there must be an institutional review board independent of DOD, and there must be proper monitoring that could only be done by non-DOD personnel.

As described earlier in this document, The Defense Authorization Act answers the controversial question of whether waiver of informed consent in military operations is ever appropriate. In passing this legislation, Congress has concluded that the President may waive the informed consent requirement for military personnel engaged in a particular military operation in certain situations. The comments on the 1990 interim rule pointed out significant areas that needed to be strengthened, including: Provision of adequate information about an investigational product before its use; adequate followup to assess whether there are adverse health consequences that result from the use of the investigational product; adequate oversight, accountability, and recordkeeping when investigational agents are used; and involvement of non-DOD personnel in decisions to use investigational products without informed consent. All of these areas have been addressed in the new interim rule that establishes the criteria and standards for the President to use in making an informed consent waiver determination.

B. Summary of Comments Recommending Changes to the Interim Rule

Seven comments recommended changes to the interim rule. Three of these comments recommended that the rule be suspended and reconsidered only if their modifications were adopted and adhered to by DOD.

Two comments recommended that a process be established for the President

to authorize the use of investigational products without informed consent in military conflicts.

The Defense Authorization Act establishes the President as the sole authority for making a waiver of informed consent determination for military personnel involved in a particular military operation. Thus, the process recommended by these comments has already been established through legislation. FDA will be involved in this process through its traditional role of reviewing specific protocols under its investigational new drug (IND) regulations.

One comment recommended that the rule be amended to require: (1) That reasonable efforts be made to inform individuals in advance that investigational products are to be used, (2) that the extent and appropriateness of the information provided be determined by the Commissioner of FDA, (3) that all individuals exposed to investigational products be informed no later than 1 year after their use, and (4) that there be established a publicly accessible site for continuous access to the most updated scientific information on these products.

The agency agrees with this comment and has incorporated the suggested requirements into the new interim rule. The interim rule requires that each member involved in the military operation be given, prior to the administration of the investigational new drug, a specific written information sheet. That information sheet is to include information (in addition to information required by 10 U.S.C. 1107(d)) concerning the investigational new drug, the risks and benefits of its use, potential side effects, and other pertinent information about the appropriate use of the product. Under 10 U.S.C. 1107(d), the information sheet is required to contain the following: (1) Clear notice that the drug being administered is an investigational new drug or a drug unapproved for its applied use; (2) the reasons why the investigational new drug or drug unapproved for its applied use is being administered; (3) information regarding the possible side effects of the investigational new drug or drug unapproved for its applied use, including any known side effects possible as a result of the interaction of such drug with other drugs or treatments being administered to the members receiving such drug; and (4) such other information that, as a condition of authorizing the use of the investigational new drug or drug unapproved for its applied use, the Secretary of Health and Human Services may require to be disclosed. FDA intends to review the information sheet as part of its review of the use of the investigational product under an IND in order to determine its adequacy. The interim rule also requires DOD to provide public notice in the **Federal Register** describing each waiver of informed consent determination, a summary of the most updated scientific information on the products used, as well as other pertinent information.

One comment from an individual who was employed at the U.S. Army Medical Materiel Development Activity, Ft. Detrick, MD, during the Gulf War, and who served for 22 years as an Army officer, stated that ''[a]s the largest training organization in the United States, perhaps in the world, DoD clearly has the capacity and resources to provide adequate information to each service member before he or she takes or uses an investigational product.'' Based on this reasoning, the Army officer suggested that the rule be amended and that DOD could, and should, institute training programs early in each service member's military career. Specifically, this comment recommended that FDA demand adequate training as part of the informed consent process and require that DOD develop and validate training guidelines for the use of investigational products that might be used under a waiver during all phases of product development.

The agency agrees with this comment. The interim rule now requires DOD to provide training to the appropriate medical personnel and potential recipients on the specific investigational new drug to be administered prior to its use.

Two comments stressed that FDA should regard itself as acting on behalf of the troops, not on behalf of the military or the DOD. These comments recommended that the interim rule be suspended or revoked until the agency critically reviewed requests from DOD to waive informed consent that contained the following documentation: (1) Documentation from DOD that identified the threat, its nature, and its likelihood; (2) documentation from DOD that administration of the proposed treatment is likely to be effective against that threat; (3) documentation from DOD that detailed concurrent conditions (such as environmental and occupational conditions, treatment regimens that may be employed by troops serving in the forces to be treated) that could alter the effects of the proposed treatment; (4) documentation from DOD that demonstrated that military medical services are capable of delivering qualified personnel and adequate supplies of necessary medical material to the specific theater of operations; (5) documentation from DOD that establishes that the recordkeeping systems are capable of tracking the proposed treatment from supplier to point of administration; and (6) documentation that demonstrates that there are medical followup plans for troops receiving the proposed treatment. These comments stated that this documentation should be made public and public comment should be sought regarding the performance of both DOD and FDA. These comments stated that if these requirements could be met, adequate information would need to be provided to the troops by individuals with whom they have daily contact.

The agency agrees with the suggestions for documentation contained in these comments and has incorporated them into the new interim rule. Under the new interim rule, each member involved in the military operation will be given, prior to the administration of the investigational new drug, a specific written information sheet. This information sheet is required, under 10 U.S.C. 1107(d), to contain specific information. The interim rule incorporates this requirement by reference and requires the disclosure of risks and benefits of the use of the investigational product, potential side effects, and other pertinent information about the appropriate use of the product.

C. Comments in Support of Retaining the Interim Rule

The agency received two comments in support of retaining the interim rule as written—one from DOD and the other from a physician from academia. This latter comment stated that:

> [t]he organization and activities of the DOD are not meant to be either democratic or reliant upon informed consent. However, the goal of DOD activities in combat situations is victory, and with that end in sight, it is reasonable to expect that the condition of the troops is considered carefully by DOD leadership. Decisions pertinent to the use of investigational drugs without informed consent will most likely represent the best interests of military personnel and the nation.

DOD's comments in support of maintaining the interim rule were similar to those expressed by DOD in requesting the interim rule initially (see the Assistant Secretary of Defense (Health Affairs) letter of October 30, 1990, to the Assistant Secretary for Health, HHS, quoted in the preamble to the interim rule (55 FR 52814), and in its September 13, 1996, response to the

May 7, 1996, petition to FDA requesting that the Commissioner repeal the interim rule (see summary in the July 1997 request for comments (62 FR 40996 at 41000)).

As previously stated, Congress now has passed legislation providing for waiver of the informed consent requirement by the President in certain military situations, thus, recognizing the need for waiver in limited situations. The agency, however, believes that the criteria and standards contained in the 1990 interim rule are not sufficient and has therefore established new criteria and standards for the President to apply in making an informed consent waiver determination.

D. Other Comments on the Interim Rule

A comment from Chairman Arlen Specter and Ranking Minority Member John D. Rockefeller IV, Senate Committee on Veterans' Affairs, stated that whether the rule should be revoked or not ''* * * is a complex decision that needs to be carefully considered, with input from health care professionals, ethicists, active duty military personnel, veterans, and the general public.'' They urged FDA, if it decided not to revoke the rule, to ensure that a process is instituted to provide maximum protection to ''* * * the health and well-being of military personnel prior to, during, and subsequent to a combat situation.'' They stressed the importance of establishing a process prior to any combat situation that would: (1) Lay out how decisions would be reached in a timely manner; (2) require institutional review boards (IRB's) used during this process to consist of at least three persons independent of DOD because the IRB will be making decisions that result in the loss of rights of a large group of individuals and objectivity is essential; (3) require health surveillance data from well-designed data collection forms be used to assess the potential health consequences of the use of products and to modify decisions as information is gained; and (4) require compliance with mechanisms for review and sanctions be put in place.

The agency agrees that the decisions associated with the interim rule have been complex and there is a need to institute a process that will provide maximum protection to military personnel. The Defense Authorization Act vests authority in the President to make a waiver of informed consent determination, and it vests in the President the process by which such decisions shall be made. FDA believes that this process, which includes use of the criteria and standards in the new interim final rule, will provide the protection of the health and well-being of military personnel urged by the comments. As suggested by this comment, the new interim rule requires the IRB to include at least three nonaffiliated members who are not employees or officers of the Federal Government.

In response to the suggestion that the rule require health surveillance to assess the potential health consequences of the use of the product and to modify decisions as information is gained, the new interim rule contains two provisions. One requires DOD to provide adequate followup to assess whether there are beneficial or adverse health consequences that result from the use of the investigational product. The second requires DOD to report to FDA and to the President any changed circumstances relating to the standards and criteria contained in the rule or that otherwise might affect the determination to use an investigational new drug without informed consent.

In response to the comment's recommendation that the process require compliance with mechanisms for review and sanctions, the agency notes that the Defense Authorization Act requires the Secretary of Defense, if the President grants the requested waiver, to submit to the chairman and ranking minority member of each congressional defense committee a notification of the waiver, together with the written determination of the President and the Secretary of Defense's justification for the request for the waiver of informed consent (see 10 U.S.C. 1107(f)(3)(B)). The new interim rule builds in accountability and compliance by requiring the Secretary of Defense to certify and document to the President that the standards and criteria in the rule have been met, including the criteria that use of the investigational drug without informed consent otherwise conforms with applicable law. Further, the new interim rule notes that ''[n]othing in these criteria or standards is intended to preempt or limit FDA's and DOD's authority or obligations under applicable statutes and regulations.'' The agency notes that the mechanisms for review and sanctions under the IND regulations apply to the DOD and its employees involved in the use of products subject to FDA regulation.

In response to the comment's suggestion that the process include public disclosure, the new interim rule requires DOD to provide public notice in the **Federal Register** as soon as practicable and consistent with classification requirements describing each waiver of informed consent determination, a summary of the most updated scientific information on the products used, and other pertinent information.

The agency has concluded that the issues associated with the 1990 interim rule are very complex and difficult, as recognized by Senators Specter and Rockefeller. As described in detail in FDA's July 1997 request for comments, there has been extensive examination of issues associated with the 1990 interim rule during the last 8 years. In addition to FDA's July 1997 request for comments, the issues have been examined in comments submitted to the agency in the 30-day comment period following the rule's publication in the **Federal Register** on December 21, 1990; in litigation (*Doe* v. *Sullivan*, 756 F. Supp. 12, 14 (D.D.C. 1991)); in a May 6, 1994, United States Senate Committee on Veterans' Affairs hearing on ''Is Military Research Hazardous to Veterans' Health? Lessons From World War II, the Persian Gulf, and Today;'' reviews conducted by the Presidential Advisory Committee on Gulf War Veterans' Illnesses; and in the Public Citizen, the National Veterans Legal Services Program, and the National Gulf War Resource Center, Inc., May 7, 1996, petition to FDA requesting that the Commissioner repeal the interim rule.

The agency believes that exceptions from the informed consent requirement should apply rarely and only when sufficient additional protections are provided to the military personnel affected.

III. Revocation of the 1990 Interim Rule

The agency recognizes that there may be future military combat situations where U.S. military personnel are at risk of exposure to chemical and biological weapons and that DOD has a critical and legitimate interest in protecting military personnel from such chemical and biological agents. This was the basis for FDA's 1990 interim rule issued in anticipation of the Persian Gulf War that gave DOD the authority to use specified investigational products to provide potential protection against chemical and biological warfare agents without obtaining informed consent from individual service personnel.

A. DOD's Experience in Implementing the Rule During the Persian Gulf War

DOD's experience during the Gulf War with pyridostigmine bromide and the botulinum toxoid vaccine was described in detail in the July 1997 request for comments (62 FR 40996 at 40998 through 41000). A brief summary of this experience follows.

In December 1990, DOD submitted protocols under IND's and requests for waiver of informed consent for: (1) Pyridostigmine bromide 30-milligram tablets, a potentially useful pretreatment against soman, a nerve gas; and (2) the botulinum toxoid vaccine, potentially protective against toxins produced by *Clostridium botulinum* (the bacterium that produces the toxin that causes botulism). The Commissioner approved both of DOD's waiver requests and each product was administered to some of the military personnel who participated in Operation Desert Storm. FDA's agreement to waive the informed consent requirement was based, in large part, on DOD's agreement to provide and disseminate specified information on these products to military personnel and upon adherence to labeling and other prescribed requirements for the use of investigational products.

Concurrent with the agency's request for comments on the interim rule, FDA was also evaluating DOD's experience in implementing IND's, as well as waivers under the interim rule, during the Gulf War in order to obtain specific factual information and to assess DOD's compliance with FDA requirements. In the agency's ongoing evaluation of the use of investigational products in the Persian Gulf, the agency identified significant deviations from Federal regulations published in Title 21, Code of Federal Regulations (CFR), parts 50 and 312 (21 CFR parts 50 and 312). These deviations were set forth in a July 22, 1997, and a December 2, 1997, letter from the Lead Deputy Commissioner of the Food and Drug Administration to the Acting Deputy Secretary of Defense for Health Affairs (Refs. 1 through 3). The noted deviations, and the relevant observations that formed the basis for the conclusion that deviations had occurred, are summarized in the following paragraphs.

1. Pyridostigmine Bromide

There was a failure to meet the conditions set by the Commissioner for granting a waiver from the informed consent requirements under the 1990 interim rule for pyridostigmine bromide. FDA's agreement to waive the informed consent requirement at the time of the Gulf War was based, in large part, on DOD's agreement to provide and disseminate information on pyridostigmine to all military personnel. Based on DOD statements to FDA as well as FDA's own evaluation, FDA has concluded that the information sheet on pyridostigmine was not provided and disseminated to military personnel in the Gulf as required by the Commissioner's letter granting the waiver under the interim rule. Because inadequate information was provided to the soldiers, at least some soldiers either took the wrong amount of pyridostigmine or disregarded orders to take it completely.

There was a failure to collect, review, and make reports of adverse experiences attributed to the use of pyridostigmine bromide in a timely manner. Although the agency waived the requirements of § 312.32 in regard to the 3- and 10-day time limits for the reporting of adverse experiences, the agency expected DOD to make a reasonable effort to collect, review, and make reports of adverse clinical consequences attributed to the use of the product in as timely a manner as conditions permitted.

There was a failure to label pyridostigmine bromide with investigational labeling as required by FDA regulations. FDA had agreed, as requested by DOD, to waive the provisions of § 312.6 in order to allow DOD to employ the phrase ''For military use and evaluation'' in place of the statement ordinarily mandated for use on the immediate package of an investigational drug product, which reads ''Caution: New Drug—Limited by Federal (or United States) Law to Investigational Use''. FDA's waiver of the standard statement was on condition that all of the product distributed to service members would carry the new ''military use'' labeling. Based on information provided to the agency, FDA believes that the pyridostigmine bromide distributed to military personnel in the Persian Gulf was not labeled as required by the conditions of the waiver.

2. Botulinum Toxoid Vaccine

There was a failure to ensure that the investigation was conducted in accordance with the general investigational plan for the botulinum toxoid vaccine during the Gulf War. The protocol for the botulinum toxoid vaccine stated that each botulinum toxoid vaccine dose was to be recorded in the individual's permanent immunization record. This was not done.

There was also a failure to maintain adequate records showing the receipt, shipment, and disposition of the investigational product botulinum toxoid vaccine as required by §§ 312.57 and 312.59.

On January 8, 1991, FDA granted DOD's request for a waiver of informed consent under the interim final rule for use of the botulinum toxoid vaccine during the Gulf War. However, following the cessation of combat activities DOD advised FDA in a March 15, 1991, letter that the military command in the theater of operations in the Persian Gulf decided to administer the botulinum toxoid vaccine on ''a voluntary basis.'' This letter did not state whether informed consent was obtained.

The military command's decision to allow administration of the vaccine on a voluntary basis indicates that the criteria for granting a waiver under the interim rule was no longer met; specifically that ''* * * preservation of the health of the individual and the safety of other personnel require that a particular treatment [botulinum toxoid vaccine] be provided to a specified group of military personnel, without regard to what might be an individual's personal preference for no treatment or for some alternative treatment.'' If the criteria for waiver were not met, DOD was required to obtain and document the informed consent of military personnel receiving the vaccine in accordance with §§ 50.25 and 50.27. Without signed consent forms to document that informed consent was obtained, and based on testimony from Persian Gulf War veterans that information on the vaccine was not uniformly given to military personnel, the agency has concluded that informed consent was not routinely obtained from military personnel who received the botulinum toxoid vaccine in accordance with FDA regulations.

Experience with the use of the waiver provision of the 1990 interim rule suggests two conclusions: (1) To the extent possible, military personnel should receive treatments whose safety and effectiveness have been fully evaluated; (2) where it is necessary to utilize investigational agents and to waive informed consent, new standards and criteria for doing so should be developed that will better ensure protection of the troops receiving the investigational product.

B. Future Use of FDA–Regulated Products by DOD

FDA has concluded that there are important ways for the agency to contribute to DOD's mandate to protect military personnel that are consistent with FDA's mission and regulations. FDA's existing mechanisms for providing access to investigational products under an IND will continue to be available to any entity that complies with the agency's specified requirements. Both DOD and FDA recognize, however, that some of the IND requirements may not be feasible in certain combat situations. Based on the lessons from use of investigational agents during the Gulf War, the agency

believes that DOD's needs can best be met through DOD's support of drug development efforts leading to approval of products found to be safe and effective.

FDA shares DOD's goal of getting the best products to military personnel. Thus, FDA is committed to working with DOD to resolve the safety and effectiveness questions that may allow FDA to approve the drug and biological products for use in military operations and during military exigencies. In order to provide pharmaceutical agents that are safe and effective in protecting military personnel, the agency believes that DOD must focus its efforts on drug development. The agency notes that under existing regulations it can expedite access to new drugs by accelerating approval (subpart H of 21 CFR part 314 and subpart E of 21 CFR part 601). In addition, consistent with the recent changes to the act on fast track products made in the Food and Drug Administration Modernization Act of 1997, FDA is committed to facilitating development and expediting the review of drugs for serious and life-threatening conditions that address unmet needs (section 506 of the act (21 U.S.C. 356)). Moreover, FDA is proposing an additional mechanism for product approval that is described elsewhere in this issue of the **Federal Register** and that relates to the evidence needed to demonstrate safety and efficacy for drug and biological products for use against lethal or toxic substances when efficacy studies in humans cannot ethically be conducted.

In order to minimize the need to use investigational products during military exigencies, DOD and FDA have formed a working group for the purpose of assisting DOD in its drug development efforts related to these products. DOD has agreed to identify those products that may provide protection to military members, develop appropriate drug development plans for each product, and establish a timeframe for completion.

FDA recognizes, however, that in rare instances investigational products may need to be used by DOD in deployment situations. The enactment of the Defense Authorization Act reflects this fact and calls for the implementation of a process that will help ensure that when informed consent is waived it will be done under standards and criteria that will help protect the troops receiving the investigational product. Accordingly, FDA has issued this new interim rule.

IV. Establishment of New Standards and Criteria

A. Description of New Interim Rule

As described earlier, under 10 U.S.C. 1107(f), the President may waive the prior consent requirement for the administration of an investigational new drug to a member of the armed forces in connection with the member's participation in a particular military operation. The statute specifies that only the President may waive informed consent and that the President may grant such a waiver only if the President determines in writing that obtaining consent: Is not feasible, is contrary to the best interests of the military member, or is not in the interests of national security. The statute further provides that in making this determination based on the grounds that it is infeasible or contrary to the best interests of the military member, the President shall apply the standards and criteria that are set forth in the relevant FDA regulations for a waiver of the prior informed consent requirements. This interim rule contains those standards and criteria. The statute is silent about the standards and criteria that the President is to apply in making a determination that obtaining consent is not in the interests of national security.

The Defense Authorization Act authorizes the Secretary of Defense to request an informed consent waiver determination from the President. The interim rule requires the Secretary of Defense to certify and document to the President that the standards and criteria in the interim rule have been met.

Section 50.23(d)(1)(i) through (d)(1)(iv) contain the fundamental information necessary to make an informed assessment of risks and benefits. Under these paragraphs, the Secretary of Defense must certify and document that: (1) The extent and strength of evidence of the safety and effectiveness of the investigational new drug in relation to the medical risk that could be encountered during the military operation supports the drug's administration under an IND; (2) the military operation presents a substantial risk that military personnel may be subject to a chemical, biological, nuclear, or other exposure likely to produce death or serious or life-threatening injury or illness; (3) there is no available satisfactory alternative therapeutic or preventive treatment in relation to the intended use of the investigational new drug; and (4) conditioning use of the investigational new drug on the voluntary participation of each member could significantly risk the safety and health of any individual member who would decline its use, the safety of other military personnel, and threaten the accomplishment of the military mission.

The requirements for IRB review of protocols for military use of investigational drugs without informed consent have been strengthened and further specified. Following the Gulf War, the agency became aware that a military IRB, upon initial review of the proposed use of the botulinum toxoid vaccine in anticipation of the Gulf War, had recommended that the vaccine be provided with informed consent (Ref. 4). The proposed use was subsequently reviewed by a different military IRB that approved its use without informed consent. It is not clear whether the conclusions of the initial IRB were shared with the subsequent IRB. In order to ensure adequate and meaningful IRB review, § 50.23(d)(1)(v) requires the duly constituted IRB to be responsible for the review of the study and requires that the IRB review and approve the investigational new drug protocol and the administration of the investigational new drug without informed consent as a prerequisite for the study to proceed. It also requires DOD's request for a waiver to include the documentation of minutes of IRB meetings at which the protocol was reviewed. This documentation of minutes is required by 21 CFR 56.115(a)(2).

Section 50.23(d)(2) describes additional requirements that pertain to this IRB that are not contained in FDA's IRB regulations part 56 (21 CFR part 56). The IRB must include at least 3 nonaffiliated members who are not employees or officers of the Federal Government (other than for purposes of membership on the IRB). The quorum required for a convened meeting must include a majority of the members including at least one member whose primary concerns are in nonscientific areas, and, if feasible, a majority of the nonaffiliated members. The minutes of IRB meetings at which the protocol is reviewed are to be provided to the Secretary of Defense for further review.

Section 50.23(d)(3) describes additional review requirements that pertain to this IRB. For the study to be able to proceed, the IRB must review and approve the contents of the required written information sheet on the investigational product; the adequacy of the plan to disseminate information, including the information sheet and other information (e.g., in forms other than written), to potential recipients; the adequacy of the information and the plans for its dissemination to health care providers, including potential side

effects, contraindications, potential interactions, and other pertinent considerations; and an informed consent form, as required by part 50, in those circumstances in which DOD determines that informed consent may be obtained from some or all personnel involved. In addition, § 50.23(d)(4) requires DOD to submit to FDA summaries of IRB meetings at which the proposed protocol has been reviewed.

In order to help ensure that the President is provided all relevant information related to the effects of the investigational drug, § 50.23(d)(1)(vi) requires the Secretary of Defense to certify and document in his or her request for a waiver determination under § 50.23(d)(1) that DOD has explained: (1) The context in which the investigational drug will be administered; (2) the nature of the disease or condition for which the preventive or therapeutic treatment is intended; and (3) to the extent there are existing data or information available, information on conditions that could alter the effects of the investigational drug.

In order to help ensure better recordkeeping than occurred during the Gulf War, § 50.23(d)(1)(vii), (d)(1)(ix), and (d)(1)(x) require the Secretary of Defense to document and certify that DOD's recordkeeping system is capable of tracking, and will be used to track the proposed treatment from the supplier to the individual recipient; that medical records of members involved in the military operation will accurately document the receipt by members of the notification required by § 50.23(d)(1)(viii) as well as any investigational new drugs in accordance with FDA regulations.

In order to help ensure that each military member is provided adequate information on the investigational product, § 50.23(d)(1)(viii) requires the Secretary of Defense to document and certify that each member involved in the military operation will be given, prior to the administration of the investigational new drug, a specific written information sheet containing specified information. Section 50.23(d)(1)(xiv) requires the Secretary of Defense to document and certify that DOD will provide training to the appropriate medical personnel and potential recipients on the specific investigational new drug to be administered prior to its use.

In response to comments that DOD must provide adequate followup to determine whether there are adverse consequences to the use of investigational products, § 50.23(d)(1)(xi) requires the Secretary of Defense to document and certify that DOD will provide adequate followup to assess whether there are beneficial or adverse health consequences that result from the use of the investigational product.

Because the agency believes that exceptions to the informed consent requirement should be made rarely and in narrow circumstances and that it is preferable to establish the safety and efficacy of products before their general use in large populations, § 50.23(d)(1)(xii) requires the Secretary of Defense to certify and document that DOD is pursuing drug development for the investigational drug (that could be used in a deployment situation), including a time line for such development, and marketing approval with due diligence. The rule contains two provisions to help ensure that informed consent waiver determinations continue to meet the standards and criteria of this rule after an initial waiver has been granted by the President. Section 50.23(d)(1)(xv) requires the Secretary of Defense to certify and document that DOD has stated and justified the time period for which the waiver is needed, not to exceed 1 year. For a waiver to exceed 1 year, this paragraph requires such a waiver to be separately renewed under the standards and criteria contained in § 50.23(d). Section 50.23(d)(1)(xvi) places a continuing obligation on DOD to report to the FDA and to the President any changed circumstances relating to these standards and criteria or that otherwise might affect the determination to use an investigational new drug without informed consent.

Section 50.23(d)(1)(xiii) has been included in order to ensure that FDA has completed its review of the investigational new drug protocol and concluded that it may proceed subject to a decision by the President on the informed consent waiver request. FDA will provide a written notification to DOD after it has completed its review of the investigational new drug protocol. This notification may either grant permission for the protocol to proceed subject to the President's decision on the informed consent waiver request or it may place the study on clinical hold. DOD should not proceed with a protocol under this rule until it has received notification from FDA that the protocol may proceed. As discussed later in this document, the agency has adopted a change in part 312 to help ensure that the IND review process is efficiently applied to the use of investigational products under this rule.

In response to a number of comments, discussed previously, that encouraged public access to information about products for which an informed consent waiver is granted, the agency has included § 50.23(d)(1)(xvii) in the rule. This paragraph requires DOD to provide public notice as soon as practicable and consistent with classification requirements through notice in the **Federal Register** describing each waiver of informed consent determination, a summary of the most updated scientific information on the products used, and other pertinent information.

Finally, in order to help ensure that DOD adheres to applicable statutes and laws, § 50.23(d)(1)(xviii) requires the Secretary of Defense to document and certify that the use of the investigational drug without informed consent otherwise conforms with applicable law. Section 50.23(d)(5) states that ''[n]othing in these criteria or standards is intended to preempt or limit FDA's and DOD's authority or obligations under applicable statutes and regulations.''

B. Description of Conforming Amendments

This interim rule necessitates a change to the regulations for human drugs so that those regulations are consistent with this rule. The agency is amending § 312.42 to explicitly state that an investigation may be placed on clinical hold pending a determination by the President to waive the prior consent requirement for the administration of an investigational new drug. If the agency invokes this reason for a clinical hold, it will mean that the agency has completed its review of the protocol and has concluded that the study may proceed; however, subjects may not be enrolled in the study until a positive decision on the informed consent waiver request has been made by the President and FDA has provided written notification to DOD that the clinical hold has been removed.

V. Request for Comments

Interested persons may, on or before December 20, 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.

FDA is revoking the December 21, 1990, interim rule and issuing a new interim rule in its place effective on date of publication in the **Federal Register**. FDA is proceeding without notice and comment rulemaking because of the

significant need to have regulations in place that are consistent with recently enacted legislation addressing waiver of informed consent in military operations and that provide adequate standards and criteria for such waiver determinations. As described in more detail in the following paragraphs, FDA finds, in accordance with section 553(b) of the Administrative Procedure Act, that it would be impracticable and contrary to the public interest to provide for notice and comment prior to the revocation of the December 1990 rule and the issuance of the new interim rule.

The statutory provision in the Defense Authorization Act that vests authority for waiver decisions in the President overrides the 1990 rule vesting authority for such waiver decisions in the Commissioner. Thus, it invalidates those parts of the 1990 regulation that are inconsistent with the Defense Authorization Act. The new interim rule corrects this inconsistency by acknowledging the existence of the Defense Authorization Act and its grant of waiver authority to the President. To require notice and comment to make this correction is unnecessary in that the new rule codifies in regulation a clear statutory mandate.

Since the issuance of the 1990 interim rule, there has been extensive public discussion regarding the rule on numerous occasions (see discussion in section II of this document). After considering all the relevant facts, including the comments received on the July 1997 request for comments, and FDA's evaluation of DOD's experience during the Persian Gulf War in implementing the 1990 rule, FDA has concluded that the rule did not work as intended. In light of the enactment of the Defense Authorization Act, with an immediate effective date and because the President could be called upon to make a waiver determination for military personnel engaged in a specific military operation at any time, the agency believes that it is critical to have in place adequate criteria and standards for the President to apply in making an informed consent waiver determination. Modifying the 1990 rule to conform to the statute, without adding the additional protections provided in this new rule is contrary to the public interest because it would leave in place, during the comment period, procedures now considered insufficient. As discussed previously, FDA has developed new strengthened criteria and standards that the President can use in making informed consent waiver determinations. Accordingly, the agency believes it is in the public interest to have these new criteria and standards in place while, at the same time, it solicits public comment.

It is, therefore, in the public interest, to establish quickly, through this new interim final rule, stringent criteria and standards for the President's application. Following the comment period, the agency intends promptly to publish a final rule.

VI. 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.

VII. Executive Order 12612: Federalism

Executive Order 12612 requires Federal agencies to carefully examine regulatory actions to determine if they would have a significant effect on federalism. Using the criteria and principles set forth in the order, FDA has considered the impact of the interim rule on the States, on their relationship with the Federal Government, and on the distribution of power and responsibilities among the various levels of Government. FDA concludes that this rule is consistent with the principles set forth in Executive Order 12612.

Executive Order 12612 states that agencies formulating and implementing policies are to be guided by certain federalism principles. Section 2 of Executive Order 12612 enumerates fundamental federalism principles. Section 3 of Executive Order 12612 states that, in addition to these fundamental principles, executive departments and agencies shall adhere, to the extent permitted by law, to certain listed criteria when formulating and implementing policies that have federalism implications. Section 4 of Executive Order 12612 lists special requirements for preemption.

Section 4 of Executive Order 12612 states that an executive department or agency foreseeing the possibility of a conflict between State law and federally protected interests within its area of regulatory responsibility is to consult with States in an effort to avoid such conflict. Section 4 of Executive Order 12612 also states that an executive department or agency proposing to act through rulemaking to preempt State law is to provide all affected States notice and opportunity for appropriate participation in the proceedings. As required by the Executive Order in section 4(d) and (e), States have, through this notice of proposed rulemaking, an opportunity to raise the possibility of conflicts and to participate in the proceedings. Consistent with Executive Order 12612, FDA requests information and comments from interested parties, including but not limited to State and local authorities, on these issues of federalism.

VIII. Analysis of Impacts

FDA has examined the impacts of the rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). 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). If a rule would have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize these impacts. Title II of the Unfunded Mandates Reform Act (Public Law 104–4) (in section 202) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation).

The agency believes that the revised rule is consistent with the regulatory philosophy and principles identified in the Executive Order and in these two statutes. The agency has determined that this rule is a ''significant regulatory action'' as defined in section 3(f)(4) of Executive Order 12866 because it raises novel policy issues. To the extent that any of the standards and criteria entail costs to the DOD, these standards and obligations are already assumed by DOD; they are enunciated here to stress their importance to safeguarding the health and welfare of military personnel to minimize the need to use this rule. With respect to the Regulatory Flexibility Act (5 U.S.C. 605(b)), any economic cost of the rule would be incurred only by DOD, which is not a small entity. Therefore, the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Under the Regulatory Flexibility Act, therefore, no further analysis is required. Similarly, because the rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in a 1-year expenditure of $100 million or more,

FDA is not required to perform a cost-benefit analysis under the Unfunded Mandates Reform Act.

IX. Paperwork

This interim final rule contains no collections of information subject to the Paperwork Reduction Act of 1995.

X. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter from the Lead Deputy Commissioner, FDA, to the Acting Deputy Secretary of Defense for Health Affairs, July 22, 1997.

2. Letter from the Army Surgeon General to the Lead Deputy Commissioner, FDA, responding to the July 22, 1997, letter, October 23, 1997.

3. Letter from the Lead Deputy Commissioner, FDA, to the Acting Deputy Secretary of Defense for Health Affairs, December 22, 1997.

4. Memorandum for record, minutes of the October 4, 1990, ninety-third meeting of the U.S. Army Medical Research Institute of Infectious Diseases Human Use Committee, October 5, 1990.

List of Subjects

21 CFR Part 50

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

21 CFR Part 312

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

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 50 and 312 are amended as follows:

PART 50—PROTECTION OF HUMAN SUBJECTS

1. The authority citation for 21 CFR part 50 continues 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.

2. Section 50.23 is amended by revising paragraph (d) to read as follows:

§ 50.23 Exception from general requirements.

* * * * *

(d)(1) Under 10 U.S.C. 1107(f) the President may waive the prior consent requirement for the administration of an investigational new drug to a member of the armed forces in connection with the member's participation in a particular military operation. The statute specifies that only the President may waive informed consent in this connection and the President may grant such a waiver only if the President determines in writing that obtaining consent: Is not feasible; is contrary to the best interests of the military member; or is not in the interests of national security. The statute further provides that in making a determination to waive prior informed consent on the ground that it is not feasible or the ground that it is contrary to the best interests of the military members involved, the President shall apply the standards and criteria that are set forth in the relevant FDA regulations for a waiver of the prior informed consent requirements of section 505(i)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)(4)). Before such a determination may be made that obtaining informed consent from military personnel prior to the use of an investigational drug (including an antibiotic or biological product) in a specific protocol under an investigational new drug application (IND) sponsored by the Department of Defense (DOD) and limited to specific military personnel involved in a particular military operation is not feasible or is contrary to the best interests of the military members involved the Secretary of Defense must first request such a determination from the President, and certify and document to the President that the following standards and criteria contained in paragraphs (d)(1) through (d)(4) of this section have been met.

(i) The extent and strength of evidence of the safety and effectiveness of the investigational new drug in relation to the medical risk that could be encountered during the military operation supports the drug's administration under an IND.

(ii) The military operation presents a substantial risk that military personnel may be subject to a chemical, biological, nuclear, or other exposure likely to produce death or serious or life-threatening injury or illness.

(iii) There is no available satisfactory alternative therapeutic or preventive treatment in relation to the intended use of the investigational new drug.

(iv) Conditioning use of the investigational new drug on the voluntary participation of each member could significantly risk the safety and health of any individual member who would decline its use, the safety of other military personnel, and the accomplishment of the military mission.

(v) A duly constituted institutional review board (IRB) established and operated in accordance with the requirements of paragraphs (d)(2) and (d)(3) of this section, responsible for review of the study, has reviewed and approved the investigational new drug protocol and the administration of the investigational new drug without informed consent. DOD's request is to include the documentation required by § 56.115(a)(2) of this chapter.

(vi) DOD has explained:

(A) The context in which the investigational drug will be administered, e.g., the setting or whether it will be self-administered or it will be administered by a health professional;

(B) The nature of the disease or condition for which the preventive or therapeutic treatment is intended; and

(C) To the extent there are existing data or information available, information on conditions that could alter the effects of the investigational drug.

(vii) DOD's recordkeeping system is capable of tracking and will be used to track the proposed treatment from supplier to the individual recipient.

(viii) Each member involved in the military operation will be given, prior to the administration of the investigational new drug, a specific written information sheet (including information required by 10 U.S.C. 1107(d)) concerning the investigational new drug, the risks and benefits of its use, potential side effects, and other pertinent information about the appropriate use of the product.

(ix) Medical records of members involved in the military operation will accurately document the receipt by members of the notification required by paragraph (d)(1)(viii) of this section.

(x) Medical records of members involved in the military operation will accurately document the receipt by members of any investigational new drugs in accordance with FDA regulations including part 312 of this chapter.

(xi) DOD will provide adequate followup to assess whether there are beneficial or adverse health consequences that result from the use of the investigational product.

(xii) DOD is pursuing drug development, including a time line, and marketing approval with due diligence.

(xiii) FDA has concluded that the investigational new drug protocol may proceed subject to a decision by the President on the informed consent waiver request.

(xiv) DOD will provide training to the appropriate medical personnel and potential recipients on the specific

investigational new drug to be administered prior to its use.

(xv) DOD has stated and justified the time period for which the waiver is needed, not to exceed one year, unless separately renewed under these standards and criteria.

(xvi) DOD shall have a continuing obligation to report to the FDA and to the President any changed circumstances relating to these standards and criteria (including the time period referred to in paragraph (d)(1)(xv) of this section) or that otherwise might affect the determination to use an investigational new drug without informed consent.

(xvii) DOD is to provide public notice as soon as practicable and consistent with classification requirements through notice in the **Federal Register** describing each waiver of informed consent determination, a summary of the most updated scientific information on the products used, and other pertinent information.

(xviii) Use of the investigational drug without informed consent otherwise conforms with applicable law.

(2) The duly constituted institutional review board, described in paragraph (d)(1)(v) of this section, must include at least 3 nonaffiliated members who shall not be employees or officers of the Federal Government (other than for purposes of membership on the IRB) and shall be required to obtain any necessary security clearances. This IRB shall review the proposed IND protocol at a convened meeting at which a majority of the members are present including at least one member whose primary concerns are in nonscientific areas and, if feasible, including a majority of the nonaffiliated members. The information required by § 56.115(a)(2) of this chapter is to be provided to the Secretary of Defense for further review.

(3) The duly constituted institutional review board, described in paragraph (d)(1)(v) of this section, must review and approve:

(i) The required information sheet;

(ii) The adequacy of the plan to disseminate information, including distribution of the information sheet to potential recipients, on the investigational product (e.g., in forms other than written);

(iii) The adequacy of the information and plans for its dissemination to health care providers, including potential side effects, contraindications, potential interactions, and other pertinent considerations; and

(iv) An informed consent form as required by part 50 of this chapter, in those circumstances in which DOD determines that informed consent may be obtained from some or all personnel involved.

(4) DOD is to submit to FDA summaries of institutional review board meetings at which the proposed protocol has been reviewed.

(5) Nothing in these criteria or standards is intended to preempt or limit FDA's and DOD's authority or obligations under applicable statutes and regulations.

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

3. 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.

4. Section 312.42 is amended by adding paragraph (b)(6) to read as follows:

§ 312.42 Clinical holds and requests for modification.

* * * * *

(b) * * *

(6) Clinical hold of any investigation involving an exception from informed consent under § 50.23(d) of this chapter. FDA may place a proposed or ongoing investigation involving an exception from informed consent under § 50.23(d) of this chapter on clinical hold if it is determined that:

(i) Any of the conditions in paragraphs (b)(1) or (b)(2) of this section apply; or

(ii) A determination by the President to waive the prior consent requirement for the administration of an investigational new drug has not been made.

* * * * *

Dated: May 25, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 99–25376 Filed 10–4–99; 8:45 am]

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federal register

Tuesday
October 5, 1999

Part VI

The President

Proclamation 7228—National Breast Cancer Awareness Month, 1999

Proclamation 7229—National Disability Employment Awareness Month, 1999

Proclamation 7230—National Domestic Violence Awareness Month, 1999

Federal Register
Vol. 64, No. 192
Tuesday, October 5, 1999

Presidential Documents

Title 3—

The President

Proclamation 7228 of September 30, 1999

National Breast Cancer Awareness Month, 1999

By the President of the United States of America

A Proclamation

Across America today, women are living challenging, fulfilling lives, skillfully balancing the responsibilities of work, family, and community, and making plans for a bright future. But for thousands of these women each year, the diagnosis of breast cancer shatters the pattern of everyday existence. For millions more, the fear of such a diagnosis casts a shadow across their lives. This year alone, an estimated 175,000 new cases will be diagnosed, and more than 43,000 women will die from breast cancer.

Despite these tragic statistics, we are beginning to see real progress in our national crusade against this disease. The breast cancer mortality rate in the United States has steadily declined over the past 10 years, and currently 2 million American women are winning the battle against this cancer.

Our steadfast commitment to breast cancer research is finally bearing fruit and has led the way to new preventative treatments. Last year, the National Cancer Institute's (NCI) landmark Breast Cancer Prevention Trial revealed that there were 49 percent fewer reported diagnoses among women who took tamoxifen. In another promising effort, researchers are looking at an alternate drug to see if we can achieve the same results but with fewer side effects.

Researchers are also conducting studies to determine if other medications can provide an effective weapon in our war against breast cancer. The Food and Drug Administration has recently approved the use of a new drug that has proved to be effective in the treatment of patients already in the advanced stages of this disease. Studies indicate that the drug may benefit 25 to 30 percent of women with advanced breast cancer. Encouraged by these findings, the NCI has rapidly expanded its study to include earlier stages of breast cancer and the treatment of other cancers, such as ovarian cancer.

We have also made promising strides in promoting the early detection of breast cancer, which is critical to prolonging patients' lives. A recent survey conducted by the NCI and the Health Care Financing Administration (HCFA) showed that 88 percent of women 65 years of age and older had undergone at least one mammogram during their lifetime—a 25 percent increase from 1992. Of the women who had a mammogram, 80 percent received their most recent test within the past 2 years, and more than 75 percent knew of Medicare's mammography coverage. The NCI and HCFA hope to build on this progress through their joint campaign to raise women's awareness of the importance of regularly scheduled mammograms and the availability of Medicare mammography benefits.

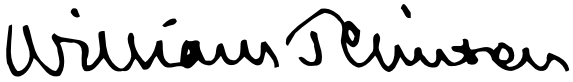
The Centers for Disease Control and Prevention (CDC) has also played a vital role in combating breast cancer by providing access to screenings for medically underserved women. Authorized by the Breast and Cervical Cancer Mortality Prevention Act of 1990, the CDC's early detection program provides breast and cervical cancer screening services for women who might otherwise not receive them, such as older women, women with lower incomes, and women of color. This program has provided nearly 1 million

mammograms, resulting in the diagnosis of more than 5,800 breast cancer cases.

Having lost my own mother to this devastating disease, I know all too well the pain and hardship that breast cancer inflicts on women and their families. I urge all Americans to join me in the crusade to prevent, treat, and ultimately eradicate breast cancer. By building on the breakthroughs we have achieved in research, prevention, and treatment and by promoting continued education and awareness, we can ensure that millions of women can look forward to longer lives and a brighter future.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 1999 as National Breast Cancer Awareness Month. I call upon government officials, businesses, communities, health care professionals, educators, volunteers, and all the people of the United States to publicly reaffirm our Nation's strong and continuing commitment to controlling and curing breast cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.



[FR Doc. 99–26129
Filed 10–4–99; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7229 of September 30, 1999

National Disability Employment Awareness Month, 1999

By the President of the United States of America

A Proclamation

As Americans, we define ourselves in many ways—not only by our families and communities, but also by our work; not only by who we are, but also by what we do for a living. Millions of Americans with disabilities, however, do not share that experience because their path to the world of work has been strewn with barriers. At a time when the unemployment rate in our Nation is at the lowest level in a generation—4.2 percent—a staggering 75 percent of Americans with disabilities remain unemployed, even though the vast majority of them want to work.

One of the greatest barriers to employment for people with disabilities is that, under current law, they often become ineligible for Medicaid or Medicare if they work. That is why I have challenged the Congress to pass the bipartisan Work Incentives Improvement Act. This proposed legislation would extend Medicare coverage for people with disabilities who return to work and improve access to health care through Medicaid. No American should ever be forced to choose between health care coverage and employment, and this legislation will help ensure that no one has to make that choice.

In addition to fully funding the Work Incentives Improvement Act, my Administration's proposed budget includes a $1,000 tax credit to help people with disabilities offset the cost of special transportation and other work-related expenses. We are also seeking to double our investment in such assistive technology as braille translators, mobile phones, and voice recognition software that give disabled citizens the tools they need to make the transition to work. And in June of this year, I signed an Executive order to expand employment opportunities for people with psychiatric disabilities and set an example for the private sector by ensuring that the Federal Government's hiring and promotion standards are the same for these workers as they are for people with mental retardation or severe physical disabilities.

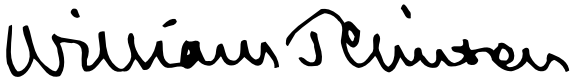
Next year our Nation will celebrate the 10th anniversary of the Americans with Disabilities Act and the 25th anniversary of the Individuals with Disabilities Education Act—the two landmark pieces of legislation that transformed our country's disability policy and set a standard for other nations around the world. However, putting an end to negative attitudes and shattering destructive stereotypes will require the concerted efforts of all sectors of society. Until we integrate Americans with disabilities as full participants in our social fabric, we will never reach our employment goals.

This year, in addition to rededicating ourselves to breaking down employment barriers, we will highlight the achievements of people with disabilities in areas such as journalism, entertainment, and the arts. People like journalist John Hockenberry prove that a wheelchair need not be an obstacle to traveling the world to report breaking news. Artists like blind sculptor Michael Naranjo and deaf painter Alex Wilhite illustrate that having a disability can be the vehicle for advancing the arts in novel ways. Performers like Laurie Rubin, a classically trained vocalist, show us that blindness need not prevent one from taking the great stage of the opera.

To recognize the enormous potential of individuals with disabilities and to encourage all Americans to work toward their full integration into the workforce, the Congress, by joint resolution approved August 11, 1945, as amended (36 U.S.C. 121), has designated October of each year as ''National Disability Employment Awareness Month.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 1999 as National Disability Employment Awareness Month. I call upon Government officials, educators, labor leaders, employers, and the people of the United States to observe this month with appropriate programs and activities that reaffirm our determination to fulfill both the letter and spirit of the Americans with Disabilities Act.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.



[FR Doc. 99–26130
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Presidential Documents

Proclamation 7230 of September 30, 1999

National Domestic Violence Awareness Month, 1999

By the President of the United States of America

A Proclamation

Most families provide a nurturing web of relationships where children learn to love and respect others and themselves and absorb the values that will shape them as adults and citizens. But for millions of Americans, family life has become a battlefield where women, children, and sometimes the elderly become casualties. The tragedy of domestic violence touches all our lives by weakening families, leaving emotional scars as devastating as physical ones, and creating a destructive cycle of violence where those who were abused as children may become abusers themselves.

My Administration has taken important steps to reduce domestic violence by creating a system that punishes offenders and provides victims with the information and assistance they need to escape destructive family environments. The cornerstone of this effort has been the Violence Against Women Act (VAWA), which was part of the historic Crime Bill I signed into law in 1994. This landmark legislation combined tough new penalties for offenders with funding for much-needed shelters, counseling services, public education, and research to help the victims of violence.

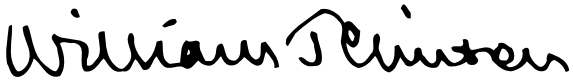
We also have established a toll-free National Domestic Violence Hotline (1–800–799–SAFE) where staff responds to as many as 10,000 calls each month; worked to raise awareness in the workplace and among health care providers about domestic violence; and more than tripled resources for programs to combat violence against women. To build on the success of the VAWA and the Crime Bill, in May of this year I unveiled my proposal for additional legislation—the 21st Century Crime Bill—that will reauthorize the Violence Against Women Act and toughen penalties for those who commit violent crimes in the presence of children.

We have increased funding for State maternal and child health programs that include child protection and family preservation services. We have worked with the Congress to pass legislation that strengthens law enforcement, enhances child predator tracking and protection mechanisms, and supports child abuse prevention efforts in State and local jurisdictions. And, at the end of last year, we launched the Children Exposed to Violence Initiative (CEVI), designed in part to reform Federal and State laws to provide swift and certain punishment for those who commit child abuse and neglect. CEVI will also strengthen local programs in hopes of reducing the number of children who are exposed to violence or become victims of violence themselves; it will also encourage alliances that include government as a partner with schools, communities, parents, and other family members in an effort to prevent child abuse.

We can take heart in our progress and at the outpouring of concern and compassion we see for the victims of domestic violence. Whether members of the law enforcement community, health care professionals, educators, religious and community leaders, policymakers, or concerned private citizens, Americans have united in the crusade against domestic violence. With increased awareness, strengthened prevention, and communities united in common cause, we are making the reduction of domestic violence a reality and the dream of ending it one day a possibility.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 1999 as National Domestic Violence Awareness Month. I call upon government officials, law enforcement agencies, health professionals, educators, community leaders, and the American people to join together to end the domestic violence that threatens so many of our people.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.



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Federal Register

Vol. 64, No. 192

Tuesday, October 5, 1999

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The United States Government Manual	**523–5227**
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TTY for the deaf-and-hard-of-hearing	**523–5229**

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

53179–53580 1
53581–53882 4
53883–54198 5

CFR PARTS AFFECTED DURING OCTOBER

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.

3 CFR

Proclamations:
4865 (see Memorandum of April 16, 1999) 53883
7227 53877
7228 54193
7229 54195
7230 54197

Executive Orders:
11145 (See 13138).....53879
11183 (See 13138).....53879
11287 (See 13138).....53879
12131 (Amended by 13138) 53880
12196 (See 13138).....53879
12216 (See 13138).....53879
12345 (Amended by 13138) 53879
12367 (Amended by 13138) 53879
12382 (See 13138).....53879
12852 (Revoked by 13138) 53880
12871 (See 13138).....53879
12876 (See 13138).....53879
12882 (See 13138).....53879
12900 (See 13138).....53879
12905 (See 13138).....53879
12961 (Revoked by 13138) 53880
12994 (See 13138).....53879
13010 (Revoked in part by 13138).....53880
13017 (Revoked by 13138) 53880
13021 (See 13138).....53879
13037 (Revoked by 13138) 53880
13038 (Revoked by 13138) 53880
13050 (Revoked by 13138) 53880
13062 (Superseded in part by 13138).....53880
13115 (Amended by 13138) 53880
13138 53879
13139 54175

Administrative Orders:
Presidential Determinations:
No. 99–38 of September 21, 1999 53573
No. 99–39 of September 21, 1999 53575
No. 99–40 of September 21, 1999 53577
No. 99–41 of September 22, 1999 53579
Memorandums:
April 16, 1999 53883

5 CFR

532 53179
831 53581
842 53581

7 CFR

915 53181
923 53885
944 53181
1000 53885
1001 53885
1002 53885
1004 53885
1005 53885
1006 53885
1007 53885
1012 53885
1013 53885
1030 53885
1032 53885
1033 53885
1036 53885
1040 53885
1044 53885
1046 53885
1049 53885
1050 53885
1064 53885
1065 53885
1068 53885
1076 53885
1079 53885
1106 53885
1124 53885
1126 53885
1131 53885
1134 53885
1135 53885
1137 53885
1138 53885
1139 53885
1755 53886

9 CFR

317 53186
381 53186

10 CFR

50 53582
72 53582
431 54114

Proposed Rules:
50 53270

12 CFR

204 53617
262 53188

14 CFR

39 53189,

53191, 53193, 53620, 53621, 53623, 53625
71 .....53627, 53887, 53888, 53889, 53890, 53891, 53892, 53893, 53894, 53895, 53896, 53898, 53899
93.....53558
Proposed Rules:
39 .....53275, 53951, 53953
71.....53956, 53957
193.....53958

15 CFR

Proposed Rules:
30.....53861
732.....53854
740.....53854
743.....53854
748.....53854
750.....53854
752.....53854
758.....53854
762.....53854
772.....53854

17 CFR

210.....53900
228.....53900
229.....53900
230.....53900
239.....53900
240.....53900
249.....53900
260.....53900

18 CFR

Proposed Rules:
385.....53959

19 CFR

122.....53627

21 CFR

50.....54180
178.....53925
312.....54180
558.....53926
878.....53927
900.....53195
Proposed Rules:
5.....53281
25.....53281
314.....53960
500.....53281
510.....53281
558.....53281
601.....53960
880.....53294

22 CFR

514.....53928
Proposed Rules:
194.....53632

24 CFR

200.....53930
882.....53868
888.....53450

28 CFR

Proposed Rules:
571.....53872

30 CFR

250.....53195
948.....53200
950.....53202
Proposed Rules:
250.....53298

32 CFR

1800.....53769

33 CFR

100.....53208, 53628
117.....53209
Proposed Rules:
20.....53970
175.....53971

36 CFR

Proposed Rules:
217.....59074
219.....59074

37 CFR

Proposed Rules:
1.....53772
3.....53772
5.....53772
10.....53772

38 CFR

Proposed Rules:
20.....53302

40 CFR

52.....53210, 53931
61.....53212
300.....53213, 53629
Proposed Rules:
52.....53303, 53973
122.....53304
123.....53304
124.....53304
130.....53304
131.....53304
132.....53632
197.....53304
258.....53976

43 CFR

1820.....53213
3500.....53512
3510.....53512
3520.....53512
3530.....53512
3540.....53512
3550.....53512
3560.....53512
3570.....53512
3800.....53213

44 CFR

65 .....53931, 53933, 53936
67.....53938, 53939
Proposed Rules:
67.....53980, 53982

46 CFR

1.....53220
2.....53220
4.....53220
10.....53220, 53230
12.....53230
15.....53220
31.....53220
34.....53220
38.....53220
52.....53220
53.....53220
54.....53220
56.....53220
57.....53220
58.....53220
59.....53220
61.....53220
63.....53220
64.....53220
67.....53220
68.....53220
69.....53220
76.....53220
91.....53220
95.....53220
98.....53220
105.....53220
107.....53220
108.....53220
109.....53220
118.....53220
125.....53220
133.....53220
147.....53220
151.....53220
153.....53220
160.....53220
161.....53220
162.....53220
167.....53220
169.....53220
177.....53220
181.....53220
189.....53220
193.....53220
197.....53220
199.....53220

46 CFR

Proposed Rules:
5.....53970

47 CFR

1.....53231
13.....53231
22.....53231
64.....53242, 53944
80.....53231
87.....53231
90.....53231
95.....53231
97.....53231
101.....53231
Proposed Rules:
54.....53648
61.....53648
69.....53648
73.....53655

48 CFR

1.....53264
15.....53264
19.....53264
52.....53264
237.....53447

49 CFR

1002.....53264
1003.....53264
1007.....53264
1011.....53264
1012.....53264
1014.....53264
1017.....53264
1018.....53264
1019.....53264
1021.....53264
1034.....53264
1039.....53264
1100.....53264
1101.....53264
1103.....53264
1104.....53264
1105.....53264
1113.....53264
1133.....53264
1139.....53264
1150.....53264
1151.....53264
1152.....53264
1177.....53264
1180.....53264
1184.....53264

50 CFR

216.....53269
635.....53949
679.....53630, 53950
Proposed Rules:
17.....53655
679.....53305

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 OCTOBER 5, 1999

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
- New drug applications—
  - Pyrantel tartrate; published 10-5-99

Color additives:
- FD&C Blue No. 2-Aluminum Lake on alumina for coloring bone cement; published 9-3-99

Food additives:
- Adjuvants, production aids, and sanitizers—
  - 2,4-di-tert-pentyl-6-[1-(3,5-di-tert-pentyl-2-hydroxyphenyl)ethyl] phenyl acrylate; published 10-5-99

Protection of human subjects:
- Informed consent for use of investigational drugs and biologics; waiver procedures for personnel in certain battlefield or combat related situations; published 10-5-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Aerospatiale; published 8-31-99
- Airbus; published 9-20-99
- Bell; published 8-31-99
- Boeing; published 8-31-99
- Israel Aircraft Industries, Ltd.; published 8-31-99
- Short Brothers; published 8-31-99

Airworthiness standards:
- Rotorcraft; normal and transport category—
  - Rotorcraft load combination safety requirements; published 8-6-99

UNITED STATES INFORMATION AGENCY

Exchange visitor program:
- Au pair programs; oversight and general accountability; published 10-5-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Animal welfare:
- Nonhuman primates; policy; comments due by 10-13-99; published 9-7-99

Poultry improvement:
- National Poultry Improvement Plan and auxiliary provisions—
  - Plan participants and participating flocks; new program classifications and new or modified sampling and testing procedures; comments due by 10-12-99; published 8-10-99

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:
- Women, infants, and children; special supplemental nutrition program—
  - Vendor management systems; mandatory selection criteria, limitation of vendors, training requirements high-risk vendors identification criteria, etc.; comments due by 10-14-99; published 9-2-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Pollock; comments due by 10-12-99; published 9-30-99
- Northeastern United States fisheries—
  - Northeast multispecies and Atlantic sea scallop; comments due by 10-12-99; published 9-10-99

DEFENSE DEPARTMENT

Banks, credit unions, and other financial institutions on DoD installations; procedures; comments due by 10-12-99; published 8-11-99

Federal Acquisition Regulation (FAR):
- Information technology; interagency acquisition by executive agent; comments due by 10-12-99; published 8-12-99

Financial institutions on DoD installations; comments due by 10-12-99; published 8-11-99

Privacy Act; implementation
- Defense Security Service; comments due by 10-14-99; published 9-14-99

DEFENSE DEPARTMENT

Engineers Corps

Navigation regulations:
- St. Marys Falls Canal and Soo Locks, MI; administration and navigation; comments due by 10-15-99; published 8-31-99

ENERGY DEPARTMENT

Classified matter or special nuclear material; criteria and procedures for determining access eligibility; comments due by 10-15-99; published 8-16-99

ENVIRONMENTAL PROTECTION AGENCY

Air programs:
- Fuel and fuel additives—
  - California; enforcement exemptions for reformulated gasoline; extension; comments due by 10-15-99; published 9-15-99
  - California; enforcement exemptions for reformulated gasoline; extension; comments due by 10-15-99; published 9-15-99

Air quality implementation plans; approval and promulgation; various States:
- Delaware; comments due by 10-12-99; published 9-9-99
- Illinois; comments due by 10-13-99; published 9-13-99
- Kentucky; comments due by 10-13-99; published 9-13-99
- New Jersey; comments due by 10-12-99; published 9-9-99
- Tennessee; comments due by 10-13-99; published 9-13-99

Hazardous waste program authorizations:
- Tennessee; comments due by 10-15-99; published 9-15-99
- Texas; comments due by 10-14-99; published 9-14-99

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Telecommunications Act of 1996; implementation—
  - Customer proprietary network information and other customer information; local competition provisions and directory assistance; comments due by 10-13-99; published 9-27-99
- Telecommunications Act of l996; implementation—
  - Competitive networks promotion in local telecommunications markets; comments due by 10-12-99; published 9-13-99

Radio stations; table of assignments:
- New Mexico; comments due by 10-12-99; published 8-31-99
- Various States; comments due by 10-12-99; published 8-31-99

FEDERAL HOUSING FINANCE BOARD

Unpublished information availability; comments due by 10-12-99; published 8-13-99

FEDERAL TRADE COMMISSION

Trade regulation rules:
- Amplifiers utilized in home entertainment products; power output claims; comments due by 10-15-99; published 9-21-99

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Information technology; interagency acquisition by executive agent; comments due by 10-12-99; published 8-12-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:
- Secondary direct food additives—
  - Acidified sodium chlorite solutions; comments due by 10-15-99; published 9-15-99

Human drugs:
- Current good manufacturing practices—
  - Positron emission tomography drug products; comments due by 10-13-99; published 9-22-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:

Public Housing Capital Fund Program; formula allocation funding system; comments due by 10-14-99; published 9-14-99

INTERIOR DEPARTMENT

Indian Affairs Bureau

Land and water:

Land held in trust for benefit of Indian Tribes and individual Indians; title acquisition; comments due by 10-12-99; published 9-14-99

INTERIOR DEPARTMENT

Land Management Bureau

Land resource management:

Rights-of-way—

Principles and procedures, and Mineral Leasing Act; comments due by 10-13-99; published 6-15-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

California bighorn sheep; Sierra Nevada distinct population segment; comments due by 10-15-99; published 9-30-99

Golden sedge; comments due by 10-15-99; published 8-16-99

Scaleshell mussel; comments due by 10-12-99; published 8-13-99

INTERIOR DEPARTMENT

National Park Service

Concession contracts; solicitation, award, and administration; comments due by 10-15-99; published 8-30-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Indiana; comments due by 10-15-99; published 9-15-99

Louisiana; comments due by 10-12-99; published 9-10-99

JUSTICE DEPARTMENT

Privacy Act; implementation; comments due by 10-12-99; published 9-10-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Information technology; interagency acquisition by executive agent; comments due by 10-12-99; published 8-12-99

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records management:

Agency records centers; storage standard update; comments due by 10-15-99; published 9-15-99

NUCLEAR REGULATORY COMMISSION

Byproduct material; domestic licensing:

Industrial devices containing byproduct material, generally licensed; requirements; comments due by 10-12-99; published 7-26-99

Special nuclear material; domestic licensing:

Critical mass possession; public health and environmental safety measures; comments due by 10-13-99; published 7-30-99

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list addition; comments due by 10-12-99; published 7-29-99

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

Connecticut; comments due by 10-12-99; published 8-13-99

New Jersey; comments due by 10-12-99; published 8-13-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Aerospatiale; comments due by 10-12-99; published 9-10-99

Airbus; comments due by 10-12-99; published 9-10-99

Boeing; comments due by 10-15-99; published 8-31-99

British Aerospace; comments due by 10-15-99; published 9-15-99

Dornier; comments due by 10-14-99; published 9-14-99

International Aero Engines AG; comments due by 10-15-99; published 9-15-99

Learjet; comments due by 10-14-99; published 8-30-99

McDonnell Douglas; comments due by 10-14-99; published 8-30-99

Raytheon; comments due by 10-12-99; published 9-10-99

Robinson Helicopter Co.; comments due by 10-12-99; published 8-11-99

Saab; comments due by 10-13-99; published 9-13-99

Airworthiness standards:

Special conditions—

Cessna Aircraft Co. Model 525A airplane; comments due by 10-13-99; published 9-13-99

New Piper Aircraft, Inc. Meridian PA-46-400TP airplane; comments due by 10-13-99; published 9-13-99

Class E airspace; comments due by 10-15-99; published 8-31-99

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Consumer information:

Seat belt positioners; comments due by 10-12-99; published 8-13-99

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Pipeline safety:

Enforcement procedures; comments due by 10-12-99; published 8-12-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Trusts with foreign grantors; definition of term ≥grantor≥; cross reference and public hearing; comments due by 10-12-99; published 8-10-99

Procedure and administration:

Private foundation disclosure requirements; comments due by 10-12-99; published 8-10-99

LIST OF PUBLIC LAWS

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H.R. 2605/P.L. 106–60

Energy and Water Development Appropriations Act, 2000 (Sept. 29, 1999; 113 Stat. 483)

H.J. Res. 34/P.L. 106–61

Congratulating and commending the Veterans of Foreign Wars. (Sept. 29, 1999; 113 Stat. 504)

H.J. Res. 68/P.L. 106–62

Making continuing appropriations for the fiscal year 2000, and for other purposes. (Sept. 30, 1999; 113 Stat. 505)

Last List October 1, 1999

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